

APPENDIX

FILED
DEC 23 1971

E. ROBERT SEAVER, CLERK

Supreme Court of the United States

TERM, 1971

No. 71-5172

CHARLES O. DUKES,

Petitioner,

v.

WARDEN, CONNECTICUT STATE PRISON,

Respondent.

**ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF CONNECTICUT**

Petition for Certiorari Filed July 27, 1971

Certiorari Granted November 9, 1971

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Order Appointing Special Attorney

The court in the above entitled Habeas Corpus Petition hereby appoints:

James A. Wade, Esq.
799 Main St.
Hartford, Conn.

as attorney for the petitioner.

Said attorney shall prepare said case for hearing as soon as possible and notify the clerk of this court in writing as soon as the case is ready for hearing.

By the Court,
LLOYD E. WEBB,
Assistant Clerk.

August 15, 1969.

No. 161335

CHARLES O. DUKES
v.
WARDEN

} SUPERIOR COURT
HARTFORD COUNTY
OCTOBER 2, 1969

Amended Petition For Habeas Corpus

The Petitioner, acting herein by Special Public Defender alleges as follows:

1. The Petitioner is presently incarcerated in the Connecticut Correctional Institute, Somers, Connecticut.
2. The cause of his imprisonment arose as follows:
 - a. On May 9, 1967, the Petitioner entered a plea of not guilty in the Superior Court in and for the County

of Hartford, Johnson, J., to an information charging him in two counts with violation of the Uniform State Narcotics Drug Act, and elected to be tried by a jury of 12.

b. On May 16, 1967, the Petitioner again appeared before the Superior Court in and for the County of Hartford, Johnson, J., withdrew his plea of not guilty and entered a plea of guilty to the aforesaid information and an amendment thereto charging him with larceny in excess of \$250.00 but less than \$2,000.00.

c. On June 16, 1967, the Petitioner was sentenced by the Superior Court in and for the County of Hartford, Devlin, J., to the Connecticut State Prison, Somers, Connecticut, as follows:

i. On the First Count: not less than five nor more than ten years;

ii. On the Second Count: two years.

3. Prior to this Petition, the Petitioner has not filed another Habeas Corpus Petition.

4. The Petitioner now claims that his detention is illegal on the ground that his pleas of guilty were involuntary, were improvidently made and were not the product of his free and intelligent will for one or more of the following reasons:

a. The Court refused to grant the motion of the Petitioner's attorney of record to withdraw from the case and to permit the Petitioner to proceed with other counsel of his own choosing;

b. The court refused to give the Petitioner a reasonable continuance to prepare his defense or to obtain counsel of his own choosing;

- c. The Petitioner was, in fact, not permitted to obtain counsel of his own choosing after the Court had given him a 24-hour continuance.
- d. At the time of his entry of his plea of guilty, the Petitioner was suffering from physical and mental disturbances which prevented him from making a free, voluntary and intelligent plea to the charges against him;
- e. At the time of his entry of his pleas of guilty, the Court failed to make adequate inquiry into the voluntariness of his pleas;
- f. At the time of his entry of his pleas of guilty, the Petitioner was not afforded effective representation of counsel because of a basic conflict of interest between his case and other cases represented by said counsel;
- g. At the time of sentencing, the Court denied the Petitioner's request to withdraw his pleas of guilty and to obtain other counsel to represent him.

5. The convictions resulting from said pleas of guilty are violative of the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States and Article First of the Constituion of Connecticut.

Wherefore, the Petitioner prays that a writ of habeas corpus be issued to bring him before said Court that justice may be done.

Dated at Hartford, Connecticut, this 2nd day of October, 1969.

CHARLES O. DUKES,
By: JAMES A. WADE
His Attorney.

Filed October 6, 1969.

Return of Respondent

1. The respondent is the Warden of the Connecticut State Prison.

2. On May 16, 1967, the petitioner pleaded guilty to one count of Violation Of Uniform State Narcotic Drug Act and one count of Larceny.

3. On June 16, 1967, the petitioner was sentenced to the Connecticut State Prison for a term of not less than five nor more than ten years on the first count and two years on the second count.

4. Thereafter, the petitioner was duly delivered to the Warden of the Connecticut State Prison on a mittimus issued by the Superior Court for Hartford County pursuant to said sentence.

5. The respondent holds the petitioner by virtue of the foregoing proceedings.

6. A copy of the following are attached hereto:

a. Information

b. Amended information

c. Mittimus

d. Judgment

e. Transcripts dated:

(1) May 9, 1967

(2) May 16, 1967

(3) June 2, 1967

(4) June 16, 1967

By Way Of Answer To The Allegations Of The Amended Petition, The Respondent Pleads As Follows:

1. Paragraph 1 of the amended petition is admitted.
2. Paragraph 2 of the amended petition is admitted.
3. Paragraph 3 of the amended petition is admitted.
4. Paragraph 4 of the amended petition is denied.
5. Paragraph 5 of the amended petition is denied.

FREDERICK E. ADAMS, Warden
Connecticut State Prison
Respondent
By JOHN D. LABELLE
State's Attorney.

Filed October 30, 1969.

INFORMATION

In the Superior Court of the State of Connecticut, Hartford County, May Term, A.D. 1967 John D. LaBelle, State's Attorney for the County of Hartford, accuses Charles O. Dukes of Hartford, Connecticut, of Violation Of Uniform State Narcotic Drug Act, and charges that at the City of Hartford, on or about the 14th day of March, 1967, the said Charles O. Dukes did possess, have under his control, sell, or dispense narcotic drugs, to wit: heroin, an opium derivative (as defined in Section 19-244 of the General Statutes of Connecticut), in violation of Sections 19-246 and 19-265 of the 1965 Supplement to the General Statutes.

JOHN D. LABELLE
State's Attorney

No. 28358

STATE OF CONNECTICUT

v.

CHARLES O. DUKES

CRIMINAL SESSION
SUPERIOR COURT
HARTFORD COUNTY
MAY 16, 1967

Amendment To Information

The information is herein amended by adding the following count:

Second Count

And the said Attorney further accuses the said Charles O. Dukes of Larceny, and charges that at the City of Hartford, on or about the 14th day of March, 1967, the said Charles O. Dukes stole various articles of a value in excess of Two Hundred Fifty Dollars (\$250) but less than Two Thousand Dollars (\$2,000), in violation of Section 53-63 of the 1965 Supplement to the General Statutes, and Section 53-65 of the General Statutes, Revision of 1958.

JOHN D. LABELLE
State's Attorney

MITTIMUS

No. 28358

To the Sheriff of the County of Hartford, His Deputy, and to the Warden of the Connecticut State Prison — *Greeting:*

Whereas, by a judgment of the Superior Court holden at Hartford within and for the County of Hartford, on the 16th day of May, 1967, Charles O. Dukes, of Hartford hereinafter referred to as the prisoner was convicted of the crime of Violation of Uniform State Narcotic Drug Act at the City of Hartford, on or about the 14th day of March, 1967 in violation of Sections 19-246 and 19-265 of the 1965 Supplement to the General Statutes as charged in first count; Larceny at the City of Hartford, on or about the 14th day of March, 1967,

in violation of Section 53-63 of the 1965 Supplement to the General Statutes, and Section 53-65 of the General Statutes, Revision of 1958, as charged in second count and was by said court on the 16th day of June, 1967 sentenced to imprisonment in the Connecticut State Prison, for the term of not less than five (5) years nor more than ten (10) years on first count and two (2) years on second count, and to stand committed in the said State Prison until said sentence be fully complied with, as appears of record; whereof execution remains to be done.

These Are Therefore By Authority Of The State Of Connecticut, to command you the Sheriff of the County of Hartford, or your deputy, that you deliver the said prisoner Charles O. Dukes to the Warden of said State Prison, or his agent, at said State Prison, and to leave with him this mittimus; and you, the same Warden of said State Prison, are likewise hereby commanded to receive the said prisoner Charles O. Dukes and him safely keep until said sentence be fully complied with or until he be discharged by due course of law.

Dated at Hartford, this 16th day of June, 1967.

By order of court
PAUL LEVINE
Assistant Clerk

JUDGMENT

STATE OF CONNECTICUT

No. 30358

STATE

v.

CHARLES O. DUKES

} SUPERIOR COURT
HARTFORD COUNTY
JUNE 16, 1967

HON. RAYMOND J. DEVLIN, JUDGE

John D. LaBelle, State's Attorney for the County of Hartford accuses Charles O. Dukes of Violation

of Uniform State Narcotic Drug Act at the City of Hartford on or about March 14, 1967 in violation of Sections 19-246 and 19-265 of the 1965 Supplement to the general statutes as charged in the information and the said attorney further accuses the said Charles O. Dukes of Larceny (value in excess of \$250.00 but less than \$2,000.00) at the City of Hartford on or about March 14, 1967 in Violation of Section 53-63 of the 1965 Supplement to the general statutes, and Section 53-65 of the general statutes, Revision of 1958 as charged in the second count of the amendment to information as on file will appear.

To both counts of said information on May 16, 1967 the said Charles O. Dukes pleaded and said that he was guilty.

Whereupon this court doth accordingly adjudge the said Charles O. Dukes guilty as charged in both counts of said information and that he be imprisoned in the Connecticut State Prison for not less than five (5) years and not more than ten (10) years on the first count and two (2) years on the second count.

DOMINIC A. DiCORLETO
Clerk

COURT PROCEEDINGS, MAY 9, 1967

Case No. 28358

STATE

v.

CHARLES O. DUKES

} SUPERIOR COURT
HARTFORD COUNTY
MAY 9th, 1967.

BEFORE HONORABLE SIDNEY A. JOHNSON, JUDGE

John D. LaBelle, Esq.
For the State

Peter J. Zaccagnino, Jr., Esq.
For the Accused

MR. LABELLE: This is a matter for trial, Your Honor. May a jury panel of thirty-five be ordered? Counsel wishes

to discuss some matter with me, I don't know what it is, but while recess is ordered may a jury panel be called.

THE COURT: Do you want them called down immediately?

MR. LABELLE: If they get one, as soon as we get one we'll know what we are going to do.

THE COURT: Very well, panel of thirty-five may be requested. There will be a short recess.

Later:

MR. ZACCAGNINO: If it please the Court, Your Honor, on this matter that is now pending before the Court, State of Connecticut versus Charles Dukes, between last night and this morning, Your Honor, we have had a number of conversations with Mr. Dukes, and I think that I am going to petition the Court to formally withdraw from this case because there happens to be a slight conflict between my client and myself, and it's not financial, Your Honor, it is one basically that goes to the heart of my representing him, and I think, Your Honor, in fairness to the defendant, he hasn't been put to plea as yet, and this case has just been bound over three or four weeks ago, it's a very recent arrest, that in good conscience and in order for this man which is a very serious charge, Your Honor, as Your Honor knows, that I think — he tells me this morning that he wants to represent himself and he so wants to represent that to the Court, and in the recess I told him the foolishness of his ways, to try a jury case by himself.

However, I don't know what his opinion is right now, but he also tells me he may get additional counsel. I don't know what the Court's position is on that. I'm going to ask Your Honor, if Your Honor wants me to put it in writing I will, to withdraw. The defendant is here, and, Your Honor, he has

full knowledge of this and wants to represent to the Court that is so. We do have this difference that may go to the heart of my representing him.

I know Mr. LaBelle is opposing my withdrawing at this date, but as I say to the Court the man has not even been put to plea as yet and it seems to me that the motion should be granted because of the very basic position of an advocate in behalf of a defendant who he must believe in the cause in which he is speaking for in many ways and there are some things here that we have a disagreement on with respect to the matter which may in some way prejudice the defendant. I just think he should have at least — the trial should be conducted in such a manner where I don't feel as his attorney perhaps something he is doing is wrong. That is the whole issue, if Your Honor please. Not wrong with respect to the arrest, I'm not talking about that, but actually the trial, the conduct of same.

MR. LABELLE: Well, if other counsel appears, Your Honor, ready to go to trial today, I have no objection to the withdrawal. Until other counsel appears it seems to me there isn't any basis to withdraw. We are ready to try the case today.

THE COURT: Are there some preliminary motions here?

MR. ZACCAGNINO: Yes, Your Honor, there are some preliminary motions. I think I'd like to at least argue those first.

THE COURT: Do you want to argue those before he is put to plea?

MR. ZACCAGNINO: Yes, Your Honor. The clerk in the center courtroom has the motions. Do you have copies?

ASSISTANT CLERK EDWARD O'BRIEN: Yes.

MR. ZACCAGNINO: Your Honor, the first motion — do you have the motions?

MR. O'BRIEN: I have the motions, not the information.

MR. ZACCAGNINO: We are only talking about the motions right now. Would you give the Court the motions? John hasn't even filed the information yet.

The first motion I'd like to argue is the motion to dismiss or quash the information because of the fact that this man was not indicted by the Grand Jury in accordance with United States Constitution Fifth Amendment in particular and the Fourteenth. I realize, Your Honor, that the State Supreme Court has ruled that it is not necessary to indict in this State. However, Your Honor, in view of the case in Ohio and Hogan versus Molloy, Molloy versus Hogan, rather, that if the Supreme Court of the United States gets this matter they may change their opinion. I know Your Honor can't sit as an appellate court and have to overrule this motion and I don't think argument is necessary. I know Your Honor can't grant it. However, we want the motion to stand as part of his file.

THE COURT: Do you wish to be heard on the motion to quash?

MR. LABELLE: Of course it's been decided in our State, Your Honor, in Connecticut 153451 in State versus Jones, and the United States Supreme Court has already decided it in Beck and Washington, 369 US 541, so that I see no basis for that motion.

THE COURT: The motion to quash is denied.

MR. ZACCAGNINO: If Your Honor pleases, with respect to the second motion that I have in the file, the second motion is directed at the — is a motion to suppress what was taken in the place known as 15 Barbour Street, because it is

our claim, Your Honor, this is strictly a question of law, I don't think it needs any evidence on it. The only matter we are directing it at, by error we listed five or six reasons, the only issue here is whether or not the Court had probable cause to issue the search warrant in the original instance. It's our claim on that, and Your Honor will have to peruse the search warrant, it's our claim that all the information contained therein, is based on hearsay evidence, and it's our claim, Your Honor, that if that is the situation that the search warrant itself is bad because there should be some corroborating factors other than as set out in US versus Jones. There are some cases, Your Honor, that have come down that have been — where they have found the search warrant to be good where they all contain hearsay evidence but those are particular cases in which there were other corroborating factors.

If Your Honor goes through the search warrant you will notice that it's all from an undercover agent who told them certain things, and the police claim that they saw known narcotic addicts going into this particular address. I claim all of that is based upon hearsay and the warrant itself on its face is defective, and it's our claim that in the rules set out in US versus Jones, and I don't have the citation here, I think I can get it for you before the morning is over, that the search warrant is bad in that respect alone.

MR. LABELLE: I have a photocopy of it, Your Honor, I'll give it to Your Honor now if there is no objection.

MR. ZACCAGNINO: There is no objection to the photostatic copy of the original going to Your Honor for perusal on the points which I mentioned.

MR. LABELLE: I will locate the original.

THE COURT: Well, I examined the affidavit and application and this search and seizure warrant, and it is found that

there is sufficient information in the affidavit and application to establish probable cause that the property should be seized so the motion to suppress is denied.

MR. ZACCAGNINO: Your Honor, there is a third request in the file for a bill of particulars, and if you will notice that there's only four basic questions, four things. Your Honor doesn't even have an information filed with the Court as yet so I suspect that —

THE COURT: I don't have the information.

MR. ZACCAGNINO: It hasn't been filed, I don't think. Have you filed it yet? Are you going to answer these questions or do you oppose the questions?

MR. LABELLE: If Your Honor please, the matters set forth in the bill of particulars are known to the defendant because he had a hearing in probable cause and all these matters were testified to in the hearing in probable cause transcript which was available to the defendant so that he is asking for something here which he already knows the answer to because he has had that hearing. He knows where the articles were found and he knows who had them. He knows all of the circumstances because he had the opportunity even to cross-examine the officers, so there isn't anything in this here that he is entitled to that he doesn't already know.

THE COURT: Have you seen it? Were you at the hearing?

MR. ZACCAGNINO: I had ordered it, Your Honor, and I understand from talking to my office they just delivered it to my office this morning. I haven't had a chance to look at it, but is there possession, control, sale and dispensing? I sat through the hearing in probable cause. If there is anything in Mr. LaBelle's file that shows sale or dispensing — the only

theory the State is going to have to proceed on is that he was in the same area as the drugs produced under his possession or control. He doesn't have any evidence I know of that came out of sale and dispensing. If they are alleging that in the information we are entitled to know so that we can prepare a defense for this man or he can defend himself whether or not they are actually trying to prove a sale. If they are he should have knowledge of that so he can find out the information concerning that to prepare himself a defense, I suspect.

THE COURT: Anything in the hearing on probable cause to show a sale?

MR. LABELLE: Not in the hearing and probable cause, Your Honor. However, this is the language of the statute and under the language of the statute if the sale or the dispensing can be proven we will be entitled to prove it, and with respect to the hearing in probable cause my understanding is that there was no testimony in that hearing with respect to a particular sale.

THE COURT: Well, do you intend to prove a sale, Mr. Attorney?

MR. LABELLE: Well, I don't want to be limited in my proof, Your Honor, and — may I have just a moment?

MR. ZACCAGNINO: Your Honor, in addition to that, while Mr. LaBelle is discussing this, for Your Honor's thoughts on it, under the State Constitution, the Federal Constitution, the defendant is entitled to know with particularity the specific charge against him. He knows that, but also, Your Honor, that the reason for the bill of particulars is so that it can aid him in his defense with respect to this particular charge. Now to go back to 111 Connecticut, Grasso versus Frassinelli, there is a case there, Your Honor, where

I think he was charged with something or something else, which involved really two parts of the same statute, and the Court struck that down because they said, well, you know, he's got to know specifically. I don't say this falls within this same particular case in 111 Connecticut, but it does. Your Honor involve the charging with possession in effect and/or sale.

Now, Your Honor, he knows about the possession because he is fully apprised. I am prepared to go to trial on possession or control but if there is a sale involved I think he is entitled to know that to prepare his defense and get witnesses. This is one of the things which I say also, Your Honor, that is involved because of the time element involved here. He's got to know these things.

MR. LABELLE: So far as the State is concerned, Your Honor, we are prepared to prove a sale. I do not wish to disclose who the sale was made to because I have reason to believe that the witness would be tampered with. I don't want to take any risk with respect to the witness.

MR. ZACCAGNINO: I don't know how the defense can overcome a statement like that, Your Honor, but of course you can say that about any witness, but I think he probably — I am saying in his behalf he probably would have to know the date, the specific date and the place and so forth if they really are intending the sale. That is why we ask to whom. If they substitute the date, time and place —

MR. LABELLE: I'll give him the date, time and place.

MR. ZACCAGNINO: It might satisfy the defendant in his defense, Your Honor.

MR. LABELLE: I do not see any reason at this point why the person who made the purchase has to be disclosed.

THE COURT: I won't have that disclosed.

MR. ZACCAGNINO: I'm not particularly claiming that but we have to know the general area.

THE COURT: The date, time and place.

MR. LABELLE: I'll give him the date, time and place.

MR. ZACCAGNINO: Okay. If he submits that, Your Honor, I have no objection, and the rest of the things, Your Honor, we're really not — I think that they are not claiming dispensing. You're not claiming dispensing?

MR. LABELLE: Only insofar as dispensing applies to the sale, Your Honor.

MR. ZACCAGNINO: All right. If that is the limitation of it I think we've got enough on the bill of particulars to go forth.

Now the next thing is, Your Honor, that the defendant now wishes to address the Court, Your Honor, on the matter which I spoke to Your Honor about, and I would just like to say to this Court —

THE COURT: No, he hasn't been put to plea yet, Your Honor, and that is — the issue here is about my motion to withdraw, that I understand Mr. LaBelle's position is the reason for his particular position but I also understand, Your Honor, this defendant's position because it's an unusual situation, Your Honor, on a case that is so new that the same day of plea, that you go to trial. I agree Mr. LaBelle called me on Monday. He said he called me earlier, I'm sure he did. If he said he called me he must have called my office. I wasn't there. And he told me to be ready but it's an unusual circumstance when they tell me to be ready and the man hasn't pled. I took it he's got to be ready to plead on Tuesday morning. I

knew it was going to be a trial and so advised the defendant. I've been waiting to address the Court because the Court has been busy on other matters. He tells me he either wants to represent himself or get counsel outside of the county that he can have more confidence in for some reason or other. Now I don't know what the reason is but he would like to address the Court before he is put to plea so he has the right to counsel. If he is not going to have that right of other counsel to get somebody to represent himself then I think, Your Honor, whatever he wants to say I'd like to have him address the Court because if Your Honor grants my motion he'll be without counsel for the moment. Do you want to address the Court?

THE ACCUSED: Judge, Your Honor, I'd like to ask the Court —

THE COURT: I can't hear you.

THE ACCUSED: I'd like to ask the Court several questions.

THE COURT: I still can't hear you.

MR. ZACCAGNINO: Speak up.

THE ACCUSED: I'd like to ask the Court several questions to be permitted. Number one, I would like to ask for the prosecutor of this particular case to withdraw from the case because if I try the case I intend to cross-examine him concerning this case and I'm afraid it's going to cause a conflict of interest. I don't think it would be fair to the accused.

MR. LABELLE: If Your Honor please, this man is not going to run this court as long as I have anything to say to the Court about it. He knows that this case is ready to go to trial and counsel also knew this as long ago as at least a week

because his office was notified by my office on several occasions during the middle of last week, Wednesday and Thursday.

Now if this man wants to try his own case let him try his own case and let counsel sit with him and advise him if he wants to try his own case. And if he has other counsel he wants to get in place of Mr. Zaccagnino then Mr. Zaccagnino can leave but as far as the State is concerned we are ready to go to trial and this story about him going to cross-examine me in this case is news to me. I don't intend to be a witness so I don't think he's going to cross-examine me.

THE COURT: Well, we'll take that matter up if and when we try the case. What is your next point?

THE ACCUSED: Number two, Your Honor, with local counsel I am afraid, well, I know there is going to be resentment. I have reasons to believe that through conversations, and I'd like the opportunity to hire an attorney from another state that don't have no knowledge of the case, of this specific case. Otherwise I feel as though that is the reason that I intend to try my own case in the event that the Court doesn't grant it.

THE COURT: You wish to try the case yourself is that it?

THE ACCUSED: If the Court doesn't grant me opportunity to hire an attorney out of the State, sir, because I don't want no resentment upon any attorneys, local attorneys.

THE COURT: Well, at this time it's rather late to bring that in. The State says it's ready for trial. You were notified for trial so we will proceed with the trial. Whether or not I will allow counsel to withdraw is another thing.

THE ACCUSED: Yes, sir. I haven't even been put to plea on this.

THE COURT: Well, you'll be put to plea if we go forward.

THE ACCUSED: Well, that's all at the present time. Thank you.

MR. ZACCAGNINO: If Your Honor pleases, I just might like to say one thing in conclusion. I think this man has other counsel besides myself involved in another matter, and I realize that the court is being tied up, but I think in view of the seriousness of the matter, in view of my position, I was going to ask for a continuance till tomorrow morning and two things may occur.

One, it may be that my position, I might be able to convince my client of. If I can't at least he will have overnight to get counsel. I think it's not an unreasonable delay of the court because the issues involved are far more serious than any inconvenience in this instance to the court. I realize this is inconvenient. I realize Mr. LaBelle told me this but between last night and this morning a great change of position has taken place between my client and I in the matter so in view of that this is something we didn't plan to delay the court, it just came about and I know one thing being part of the case that I can't see any justification, Your Honor, for not allowing that time till tomorrow morning because it may be if it doesn't develop like I would like it to develop at least this man will have a chance to go over this case, read the transcript with me, I'll advise him, get other counsel here or do something to help him. I don't hold any plea for delay of the court. I sat here for three days waiting for the court to be open to get to this point. I've been here Tuesday, Wednesday and Thursday. I didn't do anything in my office all three days. I say to Your Honor I have been here. I don't think I have unduly delayed the court and I don't think this man has. I think we have come now to the position where Your Honor has to decide that with respect to this because I don't

feel Your Honor that I can do this man justice in this particular issue and that doesn't mean that he can't get other counsel to feel differently than I do. I think he should have at least tomorrow morning. I don't think that is too much delay. I don't see the great pressure of one day when a man hasn't been put to plea. It's the first case I have had in this court where the man has been put to trial on the same day of plea. I do think it wouldn't inconvenience the court. I feel very uneasy about the situation I am presenting to the Court, Your Honor, and I don't know that it might not resolve itself. I don't think I can resolve it but I do feel he should have this overnight. If he can't get other counsel I'll assist him in trying to get him other counsel because I don't think an man can try a case of this nature by himself.

MR. LABELLE: Of course that is a matter of the Court's discretion, Your Honor. We are prepared to go forward today and the Court might wish to consider in deciding this matter whether or not a jury if it is going to be a jury trial could be picked and testimony started tomorrow.

THE COURT: Well, I think what we will do is present him for plea, give him the opportunity, then we won't present any evidence today but we'll pick a jury today and I will hold you in attendance, counsel.

MR. ZACCAGNINO: If Your Honor pleases, is Your Honor instructing me that —

THE COURT: I'm not allowing you to withdraw at this time.

MR. ZACCAGNINO: At this time I don't know whether, Your Honor, it meets with this man's approval, because it may, Your Honor —

THE COURT: He says he wants to defend himself.

MR. ZACCAGNINO: Yes, Your Honor. I think he does want to defend himself as opposed to me representing him in the matter. I don't know. If it meets with his approval I suppose he has a right to defend himself.

THE COURT: He'll be entitled to ask questions of the jurors, of the panel, if he wishes, and then we will go to trial on the factual issues tomorrow. Would you like a short recess?

MR. ZACCAGNINO: Yes, Your Honor. Excuse me. I think it might be helpful.

(Short recess.)

Later:

THE COURT: First, do you want to present the person for plea, counsel?

MR. LABELLE: Yes. May he be put to plea, Your Honor.

THE COURT: Put him to plea and election.

MR. ZACCAGNINO: We'll waive the reading of the information.

MR. O'BRIEN: Charles O. Dukes, how old are you?

THE ACCUSED: Thirty-two years old.

MR. O'BRIEN: Charles O. Dukes, the State of Connecticut charges you with violation of the Uniform State Narcotic Drug Act. How do you plead?

THE ACCUSED: Not guilty.

MR. O'BRIEN: Do you elect a trial by Court or by jury?

THE ACCUSED: By jury of twelve.

THE COURT: Very well. Now you have a statement to make?

MR. ZACCAGNINO: Yes, if Your Honor pleases. I am going to ask the Court to continue this matter until tomorrow morning and at that time, Your Honor, give Dukes a chance to get other counsel or, as he originally told me, that he wants to represent himself. It gives him the right to either represent himself or have other counsel. In the meantime I'll have a conversation with him advising him of the difficulties so he will understand what he is faced with if he represents himself. I understand he has that right if he so desires and I have told Mr. LaBelle the case is going to go forward and he understands it. Do you understand it, Dukes?

THE ACCUSED: Yes.

MR. ZACCAGNINO: So I'd ask for tomorrow morning to have a further chance to talk with Dukes.

MR. LABELLE: May I clear up one matter on the record, Your Honor? We filed a photostatic copy of the search warrant. I understand counsel has no objection to substituting the original when it gets here.

MR. ZACCAGNINO: No, I have no objection to that, Your Honor.

MR. LABELLE: I take it — the original, I understand, was sent to Middletown by mistake, to the Circuit Court's filing office, but I will have it here tomorrow.

THE COURT: Very well.

MR. LABELLE: And then as I understand it on the motions I am to give to the answer to the motion for the bill of particulars the date, time and place of the alleged sale?

MR. ZACCAGNINO: Yes, that's right.

THE COURT: Very well. Well then it's perfectly understood by you, Mr. Dukes, that you will proceed to trial tomorrow morning?

THE ACCUSED: Yes, sir.

THE COURT: Very well. Then we'll continue the case till tomorrow morning and tomorrow morning will the clerk see to it that we have a panel.

MR. O'BRIEN: Yes, Your Honor.

THE COURT: Now then we will have a short recess.

COURT PROCEEDINGS, MAY 16, 1967

CASE NO. 28358

STATE

v.

CHARLES O. DUKES

} SUPERIOR COURT

} HARTFORD COUNTY

} MAY 16, 1967

BEFORE HONORABLE SIDNEY A. JOHNSON, JUDGE

JOHN D. LABELLE, ESQ. ROBERT C. DELANEY, ESQ.

For The State

For the Accused

MR. LABELLE: I have been informed that there has been a request to change his plea to the information on file. At the time of the bindover, Your Honor, in this case, there was another count which was not put in the original information because it was a separate offense. Counsel at that time had agreed that that count would be held in abeyance until such time as this count in the original information was disposed of. In view of the request to change a plea here I

would like to file an amendment to the information, Your Honor, to add the second count back to it so that the information will be the original count plus this second count.

THE COURT: Is that understood?

MR. DELANEY: That is understood, Your Honor. We agree with that.

THE COURT: Very well. Permission is so granted. Then I understand Mr. Dukes is going to change his plea, is that it?

MR. LABELLE: Yes, Your Honor, and I would like to ask if inquiry would be made as to change of plea and that he be put to plea on both the original information again and this amendment also. Excuse me, Your Honor. The record also ought to appear that Mr. Delaney is here with him today and he is in the office of Mr. Zaccagnino. I think the Court might inquire with respect to the representation since there had been some indication that counsel had asked to withdraw the other day.

THE COURT: Well now, Mr. Dukes, I want to be sure that everything is in order here. I was present the other day, of course, when you were presented and the problem came up about an attorney. Now I want, now Mr. Delaney is here, are you fully satisfied with the services he is rendering you, Mr. Dukes?

THE ACCUSED: Yes, sir.

THE COURT: You are. And now you know of course, Mr. Dukes, that — you know of course that the State of Connecticut has the burden of proving you guilty on the charge and you are free to go to trial but you still wish to change your plea, is that correct?

THE ACCUSED: Yes, sir.

THE COURT: And do you do this of your own free will, Mr. Dukes?

THE ACCUSED: Yes, sir.

THE COURT: And you know the probable consequences of it?

THE ACCUSED: Yes, sir.

THE COURT: Very well, and no one has induced you to do this, influenced you one way or the other? You are doing this of your own free will?

THE ACCUSED: Yes.

THE COURT: Very well then. We will accept the change of plea.

ASSISTANT CLERK JOEL ELLIS: Mr. Dukes, how old are you?

THE ACCUSED: Thirty-two years old.

MR. ELLIS: Do you waive reading of the information?

MR. DELANEY: We will waive the reading.

MR. ELLIS: To the charge of violation of Uniform State Narcotic Drug Act what is your plea?

MR. DUKES: Guilty, sir.

MR. LABELLE: May we have the plea to the amendment also?

MR. ELLIS: Do you waive reading of the amended —

MR. DELANEY: Waive reading of the amended information.

MR. ELLIS: In the amended information you are charged in the second count with larceny. What is your plea to that count?

THE ACCUSED: Guilty, sir.

THE COURT: Both pleas are accepted.

MR. LABELLE: May these matters be referred to the probation department for pre-sentence report, Your Honor.

THE COURT: June 2nd.

MR. LABELLE: And may they be assigned disposition?

THE COURT: They've got quite a few, I understand, for the 26th.

MR. LABELLE: May it be June 2nd.

THE COURT: June 2nd, and continued under the same bond.

MR. LABELLE: The bond in the case is twenty thousand dollars.

THE COURT: Very well. Pre-sentence investigation is ordered, sentencing for June 2nd on the same bond.

MR. DELANEY: Thank you, Your Honor.

COURT PROCEEDINGS, JUNE 2, 1967

No. 28356

STATE	}	SUPERIOR COURT
V.		HARTFORD COUNTY
CHARLES DUKES		JUNE 2, 1967

BEFORE HONORABLE RAYMOND J. DEVLIN, JUDGE

GEORGE A. SILVESTER, ESQ.
FOR THE STATE

PETER J. ZACCAGNINO, ESQ.
FOR THE ACCUSED

MR. ZACCAGNINO: If Your Honor pleases, this was set down in the other courtroom before Judge Johnson this morning, and Mr. Capshaw is still working on the report, and they tell me, I find through Dukes they need another two weeks in which to finish it. Mr. LaBelle asked me to have the case called here because Judge Johnson is handling divorce matters.

I would also say that all the matters we have asked for consolidation haven't come in, so we'd need a continuance for that purpose anyway.

MR. SILVESTER: June 16th, if Your Honor pleases, under the same bond?

THE COURT: June 16th. Same bond.

MR. ZACCAGNINO: Thank you, Your Honor.

COURT PROCEEDINGS, JUNE 16, 1967

No. 28358

STATE	}	SUPERIOR COURT
V.		HARTFORD COUNTY
CHARLES DUKES		JUNE 16, 1967

BEFORE HONORABLE RAYMOND J. DEVLIN, JUDGE

JOHN D. LABELLE, ESQ.
ATTORNEY FOR THE STATEPETER ZACCAGNINO, ESQ.
ATTORNEY FOR THE ACCUSED

MR. LABELLE: 28358, Charles Dukes.

MR. ZACCAGNINO: If Your Honor please, prior to this man being sentenced in this particular matter, I discussed this momentarily with Mr. LaBelle. Mr. Dukes has advised me that he has other counsel from New Haven: Mr. Fazzano, who is representing him, and I don't intend in any way to delay the Court. I thought, if he has other counsel, I have no objection to getting out. In fact, I do not want to represent Dukes if he doesn't have any confidence in me. But Fazzano was tied up, Attorney Fazzano was tied up this morning and is requesting a continuance for a week, and I told Mr. Dukes the most I would do for him would be to put the motion to the Court and suggest it be continued until Tuesday. I think this, Your Honor, that if he has other counsel and because of the serious nature of the charges, that he should have counsel of his own choosing. If he has no confidence in me, I don't resent it personally. I understand his position. But I do feel that this is a very serious situation, and Mr. LaBelle wants to proceed this morning with sentencing. I don't quarrel with Mr. Labelle on that point. I want to state my position to the Court so that Your Honor will know what his position is. He told me this morning that he felt that he didn't have confidence in my

handling the matter and he wanted Mr. Fazzano to come in. If that is the situation, Your Honor, as I say, I don't have any personal feeling on it, but I suppose there can be no — you know, I can't represent a man that — or if he doesn't have confidence in me is what I want to say. If he feels he wants Attorney Fazzano, I would like to state to the Court I have no objection; and as a matter of fact, I welcome it. I don't want to be dilatory because this man comes up this morning and he tells me he has another lawyer, but I feel it is so serious I don't know what to tell Your Honor except to tell Your Honor that I should be relieved as counsel when Mr. Fazzano —

THE COURT: What could other counsel do that you couldn't do?

MR. ZACCAGNINO: I don't know. Your Honor; but I do say this: That it's become a situation, Your Honor, that I can't quite understand either, and he feels, and I stated his position to Your Honor, so that Your Honor knows. And if he has anything he wants to say to Your Honor, I suppose he ought to say it to you. I have said what I have got to say.

THE COURT: What do you want to say, Dukes?

THE ACCUSED: Well, I was —

THE COURT: I can't hear you. Speak up.

THE ACCUSED: I was most interested in justice in this case, and I spoke to maybe about twenty attorneys from Hartford, and nobody seemed to want to take the case, represent me, and it would be more justice to get more justice by hiring an attorney out of town, which I brought this out before for certain reasons.

THE COURT: Well, you have a good attorney now. What is the objection to that?

THE ACCUSED: Well, I would rather have an attorney out of town for certain reasons of the case. Your Honor, sir —

THE COURT: Well, I think we ought to go on with it today.

MR. LABELLE: There has been no appearance.

THE COURT: No appearance been filed.

MR. LABELLE: It is my understanding from Mr. Fazzano, who called my office this morning, called one of the detectives, that he was just contacted last night. He doesn't know Dukes or anything about the cases. Now, no appearance has been entered. It is simply a disposition. It isn't a trial, and I don't see there is any reason for delaying if further. He's had plenty of opportunity when he was put to plea in this matter, and the court specifically asked him before he accepted the plea whether or not he was satisfied with his counsel. And at that time the plea was accepted, he indicated to the court that he was. I ask that the sentence be imposed in 28358.

THE COURT: The sentence will be imposed.

MR. LABELLE: This matter, there is two counts in this information. One is, the first count is a violation of the Narcotics Act, 19-265; and the second count is larceny or receiving stolen goods.

Before he is sentenced, Your Honor, he'd been asked to take some cases from Fairfield County and some other counties, I understand now that he does not want to consolidate those cases, so that as long as that is clear in the record.

THE COURT: There are other cases from other counties?

MR. LABELLE: There were some cases from other counties, and I understand he doesn't want to consolidate them now.

MR. ZACCAGNINO: If Your Honor please, he wishes to address the Court, and he told me the purpose of it. I would rather have him address the Court on this matter rather than me, if Your Honor pleases.

THE COURT: You mean with respect to the other counts in other counties?

MR. ZACCAGNINO: This particular count pending before Your Honor.

THE COURT: I will give him a chance to talk.

MR. ZACCAGNINO: He tells me now, Your Honor, he would like to change his plea, and I thought Your Honor would like to know that. I don't suggest that to the Court. He suggests it, and that is the reason he hired new counsel, and this comes as a surprise to me. This is the first I heard of it, but I had a suspicion, Your Honor, that this may take place because of the problem when he entered the plea. I was maybe a little forceful. However, Your Honor, it was all discussed with him, and he does feel, Your Honor, that the reason he went out of the county was because no lawyer would properly represent him in this matter in this county. I don't believe that, because I put a lot of hours in this case. However, he does tell Your Honor now that he does want to change his plea, and he better say it himself, because Your Honor better talk to him about it.

THE COURT: What do you want to say?

THE ACCUSED: Yes, sir; I would like to change my plea, Your Honor. At the time I pleaded, I just came out of the hospital, I think it was a day, and I was unconscious for

three days, and I didn't realize at the time actually what I was pleading to. And since then, I am a patient, taking a mental examination at the Hartford Institute of Living and also Dr. Harold, a heart specialist, and she said that, the psychiatrist said that I needed psychiatry treatments.

THE COURT: I will deny the motion.

MR. LABELLE: Your Honor has his record here, and I would simply say he's, so far as I am aware of, been involved in criminal activities in this county for a substantial period of time; and on the case, I would suggest by way of disposition on the first count not less than five no more than ten years in the State's Prison. On the second count, two years, making an effective sentence of not less than five no more than twelve years.

THE COURT: All right.

MR. ZACCAGNINO: Your honor, it puts me at a slight disadvantage, but I will tell this to the Court: That at the time that he changed his plea, Your Honor, that some of these cases, Your Honor, were very tenuous at best, and it is my understanding that all of the matters were going to be disposed of on the same basis, consecutive or concurrent sentences would be imposed. I think this, Your Honor, that to sentence this man on one of these counts and for all of them, the reason I induced him, I didn't induce him, I discussed with him his best possible interest to change his plea because he had so many matters pending. Now, proceeding on two matters, and all these matters are pending, I feel that if Your Honor does accept the recommendations, which is the five to ten on the sentence, the minimum or the maximum on the narcotics case, he will have great additional time, and I don't know what to tell Your Honor other than the fact I wish Your Honor would make a note for the record, in the event I can talk to Dukes, that Your Honor does have

knowledge of these other situations, these other crimes which are of a similar nature and of a weaker nature, and I would say to Your Honor the only thing in defense of Dukes, I realize his record is bad and his activities have been bad; however, when he changed his plea and entered his plea of guilty, he saved the State considerable amount of cost and expense and time, because I think about five or six cases pending against him, they only had one or two cases that were of a strong nature, and I do think, Your Honor, that I feel having been his counsel, that I should make this fact known to Your Honor that it was a matter that Your Honor would normally, under normal circumstances, in a situation like this, enter concurrent sentences, if, in fact, it was so recommended by the State's Attorney; but since he doesn't want to plea to these other matters, I would like to make that note for the record, because I feel at some later date he may have to come back to this court and see Your Honor or see another judge on these other matters now pending before it.

THE COURT: What do you want to say, Dukes?

THE ACCUSED: I am rather flabbergasted really, because I didn't expect this this morning. It just puzzles me. I am not guilty of the charges. I am not guilty.

THE COURT: There are matters in this probation report that are very illuminating: this man driving around in very expensive cars, being hospitalized on a couple of occasions, the Welfare Department picking up a bill for seventeen hundred and ninety-four on one occasion, twenty-four hundred and five dollars on another, it doesn't smell too good.

On the first count, the sentence will be not less than five no more than ten State's Prison. The second count, the sentence will be two years.

Memorandum of Decision in Habeas Corpus

The petitioner for a writ of Habeas Corpus bases his action on: (1) that a plea of guilty is subject to review on Habeas Corpus to determine its voluntariness; (2) that his plea of guilty was involuntary, because of ineffective assistance of counsel; (3) that his plea of guilty was involuntary because of inadequate time to obtain counsel of his own choosing or to prepare his defense; (4) that his plea was involuntary because of physical and mental disturbances at the time of plea; and (5) that the Court did not establish the voluntariness, thereof. This petitioner's case has been before the Supreme Court of Connecticut, *State of Conn. v. Dukes*, 157 Conn. 498, and to some extent the issues raised herein have been answered adversely to his present claims.

The last issue that the Court did not determine the voluntariness of the plea has been determined in *State v. Dukes*, supra 506 where the court held "... we find no error in the rulings of the Court or in the exercise of the discretion with which it is vested." Prior to that quoted statement the Court had gone at length into the same facts presented at the hearing on this petition and held the inquiry adequate. The petitioner does present a new factor, i.e., his health, physical and mental, at the time of the plea. His present testimony of his physical and mental well-being is less than credible. His answers to the court's questions at that time, his present complete restatement of his ten minute discussion with Attorney Delaney, his own statement that he answered the court's questions about which Attorney Delaney cautioned him, do not indicate physical or mental incompetence. The petitioner relies to a great extent on *Boykin v. Alabama*, 23 L. Ed. 2d 274 for the requirement of court ascertainment of a plea of guilty. In that case the court made no inquiry of the defendant on a plea of guilty and thereafter the defendant received the death penalty for the crimes of common law

robbery. No evidence has been demonstrated to this court that the guilty plea was accepted without an affirmative showing that it was intelligently and voluntarily made. *Boykin, v. Alabama*, supra 279. It is interesting to note that on that date, in answer to specific inquiry by the court he indicated his satisfaction with the attorney then representing him.

The petitioner next raises the issue that his counsel had a conflict of interest that prevented his effective assistance of the plaintiff. On June 2, 1967 two defendants in another case, Andrea Sejerma and Sandra Baker, were also represented by the plaintiff's counsel on a charge of conspiracy to obtain money by false pretense before the same judge who sentenced the plaintiff. On that date counsel stated that the two women had been led astray by the plaintiff and that their cooperation led to the plaintiff's plea of guilty and his subsequent removal from society. The plaintiff was sentenced two weeks later. Significant on this issue are the facts that the plaintiff knew that his counsel represented the two women in their case which was a year older than the one from which he instituted his habeas corpus petition; that the women and the plaintiff were not co-defendants herein; and that he did not raise the point in his claim for a new attorney. He cannot complain of conflicting interests, if in fact they were conflicting, with his knowledge of both representations of counsel. 23 CJS Criminal Law, Section 982(9); *People v. Stock*, 23 Ill. 2d 35, 177 N.E. 2d 98. The plaintiff cites *Glasser v. United States*, 315 U.S. 60, 70; *Campbell v. United States*, 352 F. 2d 359, 360; *Lollar v. United States*, 376 F. 2d 243; *Sawyer v. Brough*, 358 F. 2d 70, 73 and *People v. Chacon*, 73 Cal. Rept. 10, 447 P. 2d 106 all of which involve co-defendants which was not the case here.

The petitioner further raises the issue that his plea was involuntary since he did not have adequate time to obtain counsel of his own choosing or to prepare his defense. The

petitioner never made known his desire for new counsel until the morning he was to be sentenced, even to counsel then representing him. New counsel was not present in court on that day and in fact did not appear until about one week after he was sentenced. He showed a lack of diligence and a lack of good faith with the court in doing nothing about new counsel from May 16, 1967 the date of plea to June 16, 1967 the date of sentencing, or from June 2, 1967 when Sejerma and Baker were sentenced. It was within the court's discretion to grant or deny a continuance for new counsel, 66 ALR 2d 298. See *United States v. Yager*, 220 F. 2d 795 cert. denied 394 U.S. 963; *People v. Adame*, 169 Cal. App. 2d 587, 337 P. 2d 477. Again reference is made to the Supreme Court's statement in *State v. Dukes* supra 506 that there was no abuse of discretion by the court.

The last issue raised is that the physical and mental disturbances at the time of plea rendered it involuntary. This matter has been previously covered by the court's ruling that the plaintiff's evidence of his physical and mental health is not worthy of belief. Since there was no evidence besides his own testimony on this issue the court is left with no evidence upon which to base a finding and ruling. In addition the hospital record indicates that he was responding fairly well and was completely oriented on May 12, 1967.

The issue has been discussed by both parties as to whether on a plea of guilty, habeas corpus lies to determine the voluntariness thereof, particularly in view of the ruling that such a plea waives all defenses other than that the indictment charges no offense and waives as well the right to trial, the incidents thereof and the constitutional guarantees with respect to the conduct of criminal prosecutions. *Brisson v. Warden*, 25 Conn. Supp. 202. While the facts of the crime may not be examined, the facts attendant upon the entry of the plea of guilty may be inquired into on habeas corpus. *Doran v. Wilson*, 369 F. 2d 505, 507; *Commonwealth ex rel*

West v. Myers, 423 Pa. 1 222 A. 2d 918, 921. *Machibroda v. United States*, 368 U.S. 487, 493; *Trotter v. United States* 359 F. 2d 419; *United States ex rel Siebold v. Reincke*, 362 F. 2d 592, 593. All of the cited cases have to do with coerced pleas and pleas obtained as the result of tainted confessions which is not the case here. However it is clear that the circumstance surrounding the plea of guilty may be the subject of habeas corpus.

For the reasons stated herein the petition is denied.

LEVINE, J.

January 15, 1970.

JUDGMENT IN HABEAS CORPUS

STATE OF CONNECTICUT

No.161335

CHARLES O. DUKES of the

Town of Somers

County of Tolland

State of Connecticut

V.

WARDEN

CONNECTICUT STATE PRISON

SUPERIOR COURT
COUNTY OF HARTFORD
AT HARTFORD
JANUARY 15, 1970

PRESENT HON. IRVING LEVINE, JUDGE

JUDGMENT

This petition for writ of habeas corpus dated July 1, 1969 as amended on October 6, 1969 claiming that the petitioner was confined in Connecticut State Prison without law or right came to this Court on July 14, 1969, and thence to the present time, when the parties appeared and were at issue to the Court, as on file.

The Court, having heard the parties, finds the issues for the defendant.

Whereupon it is adjudged that the petition be and hereby is dismissed.

By the Court,
PATRICIA FRIEDLE,
Assistant Clerk.

FINDING ON HABEAS CORPUS APPEAL

First: The following facts are found:

1. The petitioner was arrested in Hartford in March 1967, and charged with a violation of the Uniform State Narcotic Drug Act and larceny-receiving stolen goods.

2. He was represented in the Circuit Court by the law firm of Zaccagnino, Linardos and Delaney, which firm also appeared for him in the Superior Court.

3. Peter J. Zaccagnino, Jr., Esq., is an attorney, practicing law in Hartford, Connecticut, in partnership with Robert Delaney, Esq., and George Linardos, Esq. An associate with this firm is Robert Blechman, Esq.

4. In May 1967 Charles Dukes retained Mr. Zaccagnino to represent him in connection with the charge for which he is presently incarcerated. Whereupon Mr. Zaccagnino entered an appearance in the case in the name of his law firm, Zaccagnino, Linardos & Delaney.

5. Both Mr. Zaccagnino and Mr. Delaney on different occasions handled the matter on behalf of the petitioner.

6. At the Superior Court proceedings on May 9, 1967

the petitioner was represented by Peter J. Zaccagnino, Jr., acting as his attorney.

7. Prior to May 9, 1967 Mr. Dukes had discussions with Mr. Zaccagnino regarding his plea during which time Mr. Zaccagnino advised him he should plead guilty to the charges against him. However, Mr. Dukes maintained that he was innocent and would not agree to plead guilty.

8. Prior to May 9, 1967 Mr. Zaccagnino discussed the case a number of times with the State's Attorney.

9. He was put to plea on one count of the Information, the narcotics count.

10. The petitioner pleaded not guilty and elected a jury trial.

11. On May 10, 1967 the case was continued until May 16, 1967 for trial.

12. On May 9, 1967 Mr. Zaccagnino appeared in the Superior Court for Hartford County before Johnson, J., with Mr. Dukes and asked the Court for permission to withdraw from the case because there was "a slight conflict" between Mr. Zaccagnino and his client.

13. Mr. Dukes then addressed the Court himself and advised the Court that he wished to retain counsel other than Mr. Zaccagnino.

14. Mr. Zaccagnino reiterated his request for permission to withdraw from the case and asked the Court for a continuance of one day to enable Mr. Dukes to get other counsel.

15. The Court would not allow Mr. Zaccagnino to withdraw at that time. Mr. Dukes then entered a plea of not guilty and elected a trial by a jury of 12. The Court then

granted a 24-hour continuance and told Mr. Dukes to be prepared for trial the next day.

16. Mr. Zaccagnino reiterated his request for permission to withdraw from the case and asked the Court for a continuance of one day to enable Mr. Dukes to get other counsel.

17. The Court did not allow Mr. Zaccagnino to withdraw from the case.

18. On May 9, 1967 when the petitioner left the court room he was arrested by members of the Hartford Police Department and taken to the Hartford Police Station.

19. As a result of taking pills, he was admitted to McCook Hospital on May 11, 1967 and discharged on May 13, 1967.

20. On May 16, 1967 the petitioner appeared with Robert C. Delaney, Esq., and requested permission of the Court to change his plea to guilty to the information charging the narcotics count, and an amendment to the Information charging the larceny-receiving count.

21. On May 16, 1967 petitioner, with Attorney Robert C. Delaney assisting him, pleaded guilty to the narcotics count and larceny-receiving count.

22. Mr. Delaney was familiar with the case and had talked to the petitioner several times about the case and had handled the case in Circuit Court.

23. Between May 9, 1967 and May 16, 1967 Mr. Zaccagnino and Mr. Delaney discussed the case many times and both of them agreed they should try to convince Mr. Dukes to plead guilty. During this period, Mr. Zaccagnino tried to convince Mr. Dukes to plead guilty.

24. Prior to the entry of the guilty pleas, the Court made inquiry as to the voluntariness thereof as follows:

"MR. LABELLE: Yes, Your Honor, and I would like to ask if inquiry would be made as to change of plea and that he be put to plea on both the original information again and this amendment also. Excuse me, Your Honor. The record also ought to appear that Mr. Delaney is here with him today and he is in the office of Mr. Zaccagnino. I think the Court might inquire with respect to the representation since there had been some indication that counsel had asked to withdraw the other day."

"THE COURT: Well now, Mr. Dukes, I want to be sure that everything is in order here. I was present the other day, of course, when you were presented and the problem came up about an attorney. Now I want, now Mr. Delaney is here, are you fully satisfied with the services he is rendering you, Mr. Dukes?"

"THE ACCUSED: Yes, sir."

"THE COURT: You are. And now you know, of course, Mr. Dukes, that — you know of course that the State of Connecticut has the burden of proving you guilty on the charge and you are free to go to trial but you still wish to change your plea, is that correct?"

"THE ACCUSED: Yes, sir."

"THE COURT: And do you do this of your own free will, Mr. Dukes?"

"THE ACCUSED: Yes, sir."

"THE COURT: And you know the probable consequences of it?"

"THE ACCUSED: Yes."

"THE COURT: Very well, and no one has induced you to do this, influenced you one way or the other? You are doing this of your own free will?"

"THE ACCUSED: Yes, sir."

"THE COURT: Very well then. We will accept the change of plea."

The case was continued to June 2, 1967 for sentencing.

25. The petitioner had a lengthy conversation with Mr. Delaney, his counsel, prior to entering his plea.

26. The petitioner recalls completely his conversations held with his attorney, Mr. Delaney, before he entered his guilty plea.

27. His attorney, Mr. Delaney, on May 16, 1967, did not notice anything about his physical condition that would impair his ability to enter his plea.

28. Mr. Zaccagnino was not present in court with the petitioner on May 16, 1967, when he entered his guilty plea.

29. The petitioner on specific inquiry by the Court before he pleaded told the Court he was satisfied with the representation by Mr. Delaney.

30. On June 2, 1967 the petitioner appeared in Court with Attorney Zaccagnino for sentencing, but the case was continued to June 16, 1967 because the probation report was not finished and because matters to be consolidated from other counties had not been sent to Hartford.

31. On June 16, 1967 the petitioner was presented for sentencing, and Attorney Zaccagnino appeared with him.

32. On June 16, 1967 Mr. Dukes again appeared before the Superior Court for Hartford County, Devlin, J. with Mr. Zaccagnino for sentencing. At that time he advised the Court that he wanted to withdraw his guilty pleas and that he had retained other counsel.

33. The request for permission to change the pleas was denied whereupon Mr. Dukes was sentenced to the State Prison for not less than 5 nor more than 10 years on the First Count and for 2 years on the Second Count.

34. Ancillary to these proceedings Mr. Zaccagnino was representing two girls by the names of Sandra Baker and Andrea Sejerman for offenses unrelated to the charges to which Mr. Dukes had pleaded guilty.

35. The petitioner was a co-defendant in the same case with Sandra Baker and Andrea Sejerman, and they were all charged with conspiracy to obtain money by false pretenses.

36. The petitioner in the case in which he was involved with Sandra Baker and Andrea Sejerman had as his counsel Attorney Boce Barlow.

37. The petitioner was not represented by Attorney Zaccagnino or any member of his firm in the case that he was a co-defendant with Sandra Baker and Andrea Sejerman.

38. Sandra Baker and Andrea Sejerman were not in any way connected with the petitioner in the case charging him with violation of the narcotics act and larceny-receiving stolen goods for which he pleaded guilty.

39. During his remarks on behalf of the Baker and Sejerman girls, Mr. Zaccagnino told the Court that these girls had come under the influence of Charles Dukes who had led them astray. He pointed out that because of their cooperation with the State Police they capitulated Dukes into

pleading guilty. He noted that because of their cooperation Dukes would very shortly be removed from society. He placed the blame for the offenses committed by the girls on Dukes saying that he was the most culpable since he had all the instruments with which to dupe the girls.

40. The sentencing remarks by Attorney Zaccagnino in the Sandra Baker and Andrea Sejerma cases, when he was referring to Dukes, the petitioner, only had to do with the relationship between Dukes and the two girls in that particular case where all three of them were co-defendants.

41. All of the remarks made by Attorney Zaccagnino concerning Dukes and the two girls only pertained to that particular case and had nothing to do with the petitioner's case for which he was sentenced, and which is the subject of this habeas corpus.

42. When the petitioner Dukes hired Mr. Zaccagnino to represent him on the narcotics and larceny-receiving case, the petitioner knew that Mr. Zaccagnino at that time was representing Sandra Baker and Andrea Sejerma in the conspiracy to obtain money by false pretenses case in which the petitioner was a co-defendant and was represented by Mr. Barlow.

43. On June 16, 1967, when the petitioner was presented and sentenced, he indicated to the Court that he had consulted other counsel, the night before.

44. No other counsel had entered any appearance on behalf of the petitioner.

45. The petitioner on June 16, 1967, in connection with his claim about contacting other counsel, did not make any complaint to the Court that he was not satisfied with Attorney Zaccagnino because he represented Sandra Baker and Andrea Sejerma.

Second: The following conclusions of fact have been reached:

46. The petitioner at all times knew that Attorney Zaccagnino represented Sandra Baker and Andrea Sejerma in the conspiracy to obtain money by false pretenses case, a case in which the petitioner was also charged as a co-defendant.

47. The petitioner hired Attorney Zaccagnino to represent him after Attorney Zaccagnino had been retained to represent the two girls, and the petitioner knew when he hired Attorney Zaccagnino to represent him that Attorney Zaccagnino represented the two girls in the unrelated conspiracy to obtain money by false pretenses case, in which he was also involved.

48. There was no connection between the conspiracy to obtain money by false pretenses case and the narcotics and larceny-receiving case for which the petitioner was sentenced.

49. The remarks made by Attorney Zaccagnino on behalf of Sandra Baker and Andrea Sejerma at the time of sentencing on June 2, 1967 concerning the petitioner only had to do with the petitioner's connection with the girls in the conspiracy to obtain money by false pretenses case.

50. The petitioner never made any request to the trial court that he be permitted to obtain new counsel because of any conflict of interest by Mr. Zaccagnino in representing him in the narcotics and larceny-receiving case while at the same time Mr. Zaccagnino represented the two girls in the unrelated conspiracy to obtain money by false pretenses case.

51. On May 16, 1967, when he entered his guilty plea, there was nothing about his physical condition that in any way impaired his ability to enter his plea.

Third: The following conclusions of law have been reached:

52. The voluntariness of the guilty pleas entered by the petitioner on May 16, 1967 has already been determined in *State v. Dukes*, 157 Conn. 498, 506.

53. The defendant was not denied the effective assistance of counsel, and there was not any conflict of interest because his counsel represented Baker and Sejeran in an unrelated case.

54. The plea of guilty by the petitioner on May 16, 1967 was the free and understanding expression of his own wishes.

55. The guilty plea entered by the petitioner on May 16, 1967 was intelligently and voluntarily made.

56. The inquiry made by the Court at the time the petitioner entered his guilty plea was adequate and sufficient for the Court to determine that the guilty plea of the petitioner was voluntarily and intelligently made.

Fourth: The petitioner made the following claims of law respecting the judgment to be rendered upon which the Court ruled as hereinafter stated:

57. Petitioner's pleas of guilty were involuntarily made in that he was denied the effective assistance of counsel due to the conflict of interest that his attorney had in representing two clients whose interests were adverse to his, but the Court ruled that petitioner could not complain of a conflict of interest since he knew of both representations at the time of his plea.

58. The record fails to disclose facts sufficient to establish the voluntariness of the petitioner's guilty pleas in that the trial Court did not make adequate inquiry to establish

same, but the Court ruled that the trial Court had made sufficient inquiry.

59. Judgment should enter setting aside petitioner's pleas of guilty and granting petitioner's petition for writ of habeas corpus.

All of these claims the Court denied.

Fifth: All of the exhibits introduced into evidence on the trial of this matter together with the transcripts of the prior proceedings annexed to the Respondent's Return are hereby made a part of the record and may be used on the appeal to the Supreme Court without printing.

LEVINE, J.

Filed May 27, 1970.

Assignment of Errors on Habeas Corpus Appeal

The Court erred:

1. In refusing to find the material facts set forth in paragraphs 17 and 18 of the Draft Finding which were admitted or undisputed;
2. In refusing to reach the conclusions stated in paragraphs 21, 22, 23, 24 and 25 of the Draft Finding;
3. In reaching the conclusions of law stated in paragraphs 52, 53, 54, 55 and 56 of the Finding;
4. In denying the claims of law made by the Petitioner in paragraphs 57, 58 and 59 of the Finding;
5. In denying the Petition for Habeas Corpus and rendering judgment for the defendant when the conclusions

reached by the Court do not support it in that on the face of the record a conflict of interest is apparent thereby depriving the Petitioner of the effective assistance of counsel.

Petitioner, CHARLES O. DUKES
By JAMES A. WADE
His Attorney

Filed June 8, 1970.

Read June 15, 1970.

LEVINE, J.

SUPREME COURT
HARTFORD COUNTY } CLERK'S OFFICE

The above and foregoing is a true copy of the record in said case to be used in the trial in the Supreme Court.

Attest,

DOMINIC A. DICORLETO

Clerk.

OPINION BELOW

CHARLES O. DUKES

v.

WARDEN, CONNECTICUT STATE PRISON

Habeas corpus alleging unlawful imprisonment, brought to the Superior Court in Hartford County and tried to the court, *Levine, J.*; judgment dismissing the appeal, from which the plaintiff appealed. *No error.*

James A. Wade, for the appellant (plaintiff).

Richard F. Banbury, assistant state's attorney, with whom, on the brief, was *John D. LaBelle*, state's attorney, for the appellee (state).

LOISELLE, J. The plaintiff pleaded guilty, on May 16, 1967, to two counts in an information charging a violation of the Uniform State Narcotic Drug Act in the first count, and larceny in the second count. He was sentenced to state prison on June 16, 1967.

This appeal is taken from a judgment rendered January 15, 1970, denying his application for a writ of habeas corpus after a full hearing on the merits. Statutory certification for the appeal to this court was granted pursuant to General Statutes § 52-470.

This court has previously affirmed the plaintiff's conviction in connection with a direct appeal taken by him. *State v. Dukes*, 157 Conn. 498, 255 A.2d 614. The plaintiff, however, has made certain claims involving his federal constitutional rights in the instant appeal from the judgment denying his petition for a writ of habeas corpus which were not raised on direct appeal.

It is well established that a guilty plea which is not made voluntarily and intelligently constitutes a violation of a defendant's federal constitutional rights and a judgment of conviction based on such a plea cannot stand. See *Brady v. United States*, 397 U.S. 742, 748, 90 S. Ct. 1463, 25 L. Ed. 2d 747; *Boykin v. Alabama*, 395 U.S. 238, 243, 89 S. Ct. 1709, 23 L. Ed. 2d 274; *McCarthy v. United States*, 394 U.S. 459, 466, 89 S. Ct. 1166, 22 L. Ed. 2d 418; *Machibroda v. United States*, 368 U.S. 487, 493, 82 S. Ct. 510, 7 L. Ed. 2d 473; *Kercheval v. United States*, 274 U.S. 220, 223, 47 S. Ct. 582, 71 L. Ed. 1009; *Consiglio v. Warden*, 160 Conn. 151, 160, 276 A.2d 773; *Williams v. Reincke*, 157 Conn. 143, 148, 249 A.2d 252. The plaintiff in his petition alleged that his guilty plea was not voluntary and intelligent on several grounds. On appeal, however, he has asserted in essence only that he was denied the effective assistance of counsel which rendered his plea involun-

tary, and that the trial court did not make an adequate on-the-record inquiry into the voluntariness of his plea.

The plaintiff's primary claim is that the trial court erred in concluding that he was not denied the effective assistance of counsel and in overruling his claim that his plea was rendered involuntary by the ineffective assistance of counsel.

The following facts are relevant to this claim. The plaintiff was arrested in Hartford in March, 1967 on the two charges previously mentioned. He was represented in the Circuit Court by Robert C. Delaney, a member of the law firm of Zaccagnino, Linardos and Delaney, on the bindover proceedings. Between the time of the bindover proceedings and May 9, 1967, when the plaintiff appeared in the Superior Court for Hartford County for the entry of his plea, he had had discussions with Peter J. Zaccagnino, Jr., a member of the above-named law firm, regarding his plea. At the Superior Court hearing on May 9, 1967, the plaintiff had further discussions with Attorney Zaccagnino who advised him to plead guilty. The plaintiff maintained his innocence and pleaded not guilty after some further discussion with the court, the state's attorney and Attorney Zaccagnino.

On May 16, 1967, the plaintiff appeared with Attorney Delaney and requested permission of the court to change his plea concerning the two counts in the information. After a lengthy discussion with Attorney Delaney and after searching questions by the court (*Johnson, J.*) concerning the change of plea, the plaintiff pleaded guilty to both charges. Attorney Zaccagnino was not present in court with the plaintiff when he entered his guilty plea.

On June 2, 1967, the plaintiff appeared in court with Attorney Zaccagnino for sentencing but the case was continued to June 16, 1967, at which time the plaintiff again appeared in court with Attorney Zaccagnino for sentencing.

At that time he requested that his plea of guilty to both charges be withdrawn but the court denied his request and proceeded to sentence him to the state prison.

Ancillary to these proceedings, Attorney Zaccagnino represented two girls charged with conspiracy to obtain money by false pretenses in another unrelated case in which the plaintiff was a codefendant. The plaintiff was represented in that case by other counsel. The girls were in no way connected with the instant case in which the defendant pleaded guilty. Prior to their sentencing by the court, Attorney Zaccagnino made certain remarks on their behalf and stated that the plaintiff had led the two girls astray; that the cooperation of the two girls had led the plaintiff to plead guilty in that case and that because of such cooperation the plaintiff would very shortly be removed from society. He also stated that the blame for the offenses committed by the two girls should be placed on the plaintiff as he was the most culpable since he had all the instruments with which to dupe the girls. These remarks by Attorney Zaccagnino concerning the plaintiff had only to do with the relationship of the plaintiff and the two girls in that particular case where all three of them were codefendants, and in no way referred to the instant case for which he was later to be sentenced.

None of the aforementioned facts found by the court are attacked by the plaintiff. The plaintiff, however, assigns error in the trial court's refusal to find certain paragraphs of his draft finding. The paragraphs in question state that on April 18, 1967, Attorney Zaccagnino represented the two girls when they appeared to plead guilty, that on June 2, 1967, he represented them when they appeared for sentencing, and that these appearances were before the same judge (*Devlin, J.*) before whom the plaintiff in this case later appeared for sentencing. The plaintiff has printed in his appendix portions of the transcript of the proceedings at which the girls were



represented by Attorney Zaccagnino which disclose that the omitted facts were true. The state in its counterfinding included the same requests as were included in the paragraph in question of the plaintiff's draft finding. Moreover, the trial court in its memorandum of decision takes note of the omitted facts and treats them as undisputed. In light of the foregoing, we will take cognizance of the facts in question. See *State v. Mahmood*, 158 Conn. 536, 539, 265 A.2d 83.

In connection with the plaintiff's direct appeal this court held that the trial court did not err in concluding: That his plea of guilty on May 16, 1967, was voluntary and intelligent; that he had ample time to change counsel or indicate a desire again to change his plea between May 16 and June 16; that no credible evidence was introduced in support of his request to change his plea made at the time of sentencing on June 16; that his request to change his plea made at this time was for the purpose of delaying sentencing, and that it would not be fair and just under all the circumstances to allow the defendant again to change his plea. *State v. Dukes*, 157 Conn. 498, 506, 255 A.2d 614.

In *Glasser v. United States*, 315 U.S. 60, 62 S. Ct. 457, 86 L. Ed. 680, the Supreme Court enunciated the principle that a conflict of interest in the representation of two or more defendants in the same case by the same counsel constitutes a denial of effective assistance of counsel. The mere fact, however, of joint representation of codefendants by a single attorney is not sufficient to establish ineffective assistance of counsel in the absence of a showing of an actual conflict of interest prejudicial to one of the defendants. See *United States v. Youpee*, 419 F.2d 1340, 1346 (9th Cir.); *United States v. Sheiner*, 410 F.2d 337, 343 (2d Cir.); *United States v. Berriel*, 371 F.2d 587 (6th Cir.); *Mohler v. United States*, 312 F.2d 228, 230 (7th Cir.), cert. denied, 374 U.S. 854, 83 S. Ct. 1922, 10 L. Ed. 2d 1074; *Lott v. United States*, 218 F.2d 675, 681 (5th Cir.); *State v. Costa*, 155 Conn. 304, 308, 228

A.2d 561, cert. denied, 389 U.S. 1044, 88 S. Ct. 789, 19 L. Ed. 2a 837.

The plaintiff claims that he was denied the effective assistance of counsel because there was a conflict of interest between Attorney Zaccagnino's representation of him in this case and his representation of the two defendants in another entirely unrelated case wherein he was a codefendant while the instant case was pending. This claim is based on the fact that Attorney Zaccagnino made derogatory remarks about the plaintiff to the trial judge before whom he was appearing on behalf of the two defendants in the other unrelated case, apparently in an effort to secure lighter sentences for them. The plaintiff contends that he was prejudiced by these remarks because they were made before the same judge who, two weeks later, sentenced him for the offenses with which he was charged in this case.

Even assuming, *arguendo*, that there was a denial of the effective assistance of counsel because of a conflict of interest prejudicial to the plaintiff, the only question in this regard presented by this appeal is whether the conflict rendered the plea involuntary and unintelligent. Since *Gideon v. Wainwright*, 372 U.S. 335, 83 S. Ct. 792, 9 L. Ed. 2d 799, it has been clear that a plea of guilty to a felony charge entered without counsel is invalid. *Brady v. United States*, 397 U.S. 742, 748 n.5, 90 S. Ct. 1463, 25 L. Ed. 2d 747; see *White v. Maryland*, 373 U.S. 59, 83 S. Ct. 1050, 10 L. Ed. 2d 193; see generally, note, 25 L. Ed. 2d 1025, 1032. Where, as here, however, a guilty plea is entered upon the advice of counsel, the plea constitutes an admission of guilt and a waiver of nonjurisdictional defects and claims, including federal constitutional claims, which might otherwise be raised by way of defense, appeal or collateral attack. See *United States ex rel. Rogers v. Warden*, 381 F.2d 209, 212 (2d Cir.); *United States v. Doyle*, 348 F.2d 715, 718 (2d Cir.), cert. denied, 382 U.S. 843, 86 S. Ct. 89, 15 L. Ed. 2d 84; *United*

States ex rel. Boucher v. Reincke, 341 F.2d 977, 980 (2d Cir.); *Consiglio v. Warden*, 160 Conn. 151, 166, 276 A.2d 773; *Williams v. Reincke*, 157 Conn. 143, 147, 249 A.2d 252. This waiver rule means that a claim of the ineffective assistance of counsel due to an alleged conflict of interest, standing alone, is not sufficient to call the validity of a guilty plea and the judgment of conviction based thereon into question. *Curry v. Burke*, 404 F.2d 65 (7th Cir.); *Vanater v. Boles*, 377 F.2d 898, 901 (4th Cir.); *Martin v. United States*, 256 F.2d 345, 349 (5th Cir.), cert. denied, 358 U.S. 921, 79 S. Ct. 294, 3 L. Ed. 2d 240; *In re Shuttle*, 125 Vt. 257, 262, 214 A.2d 48. Of course, a guilty plea does not constitute a waiver of a claim that the plea itself was rendered involuntary and unintelligent as a result of a violation of an accused's fundamental constitutional rights. See *Pennsylvania ex rel. Herman v. Claudy*, 350 U.S. 116, 118, 76 S. Ct. 223, 100 L. Ed. 126; *Doran v. Wilson*, 369 F.2d 505, 507 (9th Cir.); *Williams v. Reincke*, *supra*, 148. Thus, an allegation of the ineffective assistance of counsel is a factor to be taken into consideration in determining whether a guilty plea was voluntary and intelligent, but for the plea and the judgment of conviction based thereon to be overturned on this ground, it must be demonstrated that there was such an interrelationship between the ineffective assistance of counsel and the plea, that it can be said the plea was not voluntary and intelligent because of the ineffective assistance. See *Parker v. North Carolina*, 397 U.S. 790, 796, 90 S. Ct. 1458, 25 L. Ed. 2d 785; *McMann v. Richardson*, 397 U.S. 759, 770, 90 S. Ct. 1441, 25 L. Ed. 2d 763; *United States ex. rel. Boucher v. Reincke*, *supra*, 981.

There is nothing in the record before us which would indicate that the alleged conflict resulted in the ineffective assistance of counsel and did in fact render the plea in question involuntary and unintelligent. The plaintiff does not claim, and it is nowhere indicated in the finding, nor could it be inferred from the finding, that either Attorney Zaccag-

nino or Attorney Delaney induced the plaintiff to plead guilty in furtherance of a plan to obtain more favorable consideration from the court for other clients. See *United States ex rel. Taylor v. Rundle*, 305 F. Sup. 1036, 1039 (E.D. Pa.). Neither does the finding in any way disclose, nor is it claimed, that the plaintiff received misleading advice from Attorney Zaccagnino or Attorney Delaney which led him to plead guilty. *McMann v. Richardson*, *supra*; *Parker v. North Carolina*, *supra*. Moreover, the trial court specifically found that when the plaintiff engaged Zaccagnino as his counsel, he knew that Zaccagnino was representing two defendants in the unrelated case in which he was a codefendant, that he never complained to the Court that he was not satisfied with Attorney Zaccagnino because of this dual representation, that he was not represented at the entry of his plea by Attorney Zaccagnino, that he was represented by Attorney Delaney at the entry of his plea, that he had a lengthy conversation with Attorney Delaney prior to entering his plea which he recalled completely, and that on specific inquiry by the court before he pleaded guilty, he told the court that he was satisfied with the representation by Attorney Delaney. The court did not err in concluding that the plaintiff's plea was not rendered involuntary and unintelligent by the alleged conflict of interest.

Obviously, the derogatory remarks by Attorney Zaccagnino on behalf of his clients in one case about a client whom he is representing in another case were highly improper. "When a client engages the services of a lawyer in a given piece of business he is entitled to feel that, until that business is finally disposed of in some manner, he has the undivided loyalty of the one upon whom he looks as his advocate and his champion." *Grievance Committee v. Rottner*, 152 Conn. 59, 65, 203 A.2d 82; see *United States ex rel. Taylor v. Rundle*, *supra*; *Commonwealth v. Cullen*, 216 Pa. Super. 23, 260 A.2d 818. Attorney Zaccagnino is not a party to these proceed-

ings and the question as to whether or not his conduct was such as to merit disciplinary action is not before us for decision on this appeal. We do not, accordingly, express any opinion as to what, if any, disciplinary action should be taken by the appropriate committee or by the Superior Court. As we have pointed out, the only question at issue here is whether counsel's action rendered the plaintiff's plea involuntary and unintelligent.

The plaintiff also claims that the trial court erred in concluding that the on-the-record inquiry made by the trial court at the entry of his plea was adequate for the court to determine that the plea was voluntary and intelligent. The plaintiff contends that the court's inquiry did not satisfy the requirements of *Boykin v. Alabama*, 395 U.S. 238, 89 S. Ct. 1709, 23 L. Ed. 2d 274, in which the United States Supreme Court held that it could not be presumed on the basis of a silent record that a plea was knowingly intelligent and voluntary. This court, however, recently held that the *Boykin* rule was not applicable retroactively to cases such as the present case in which the plea was entered prior to the *Boykin* decision. *Consiglio v. Warden*, 160 Conn. 151, 166, 276 A.2d 773. Moreover, the record in this case is far from being a silent one. The plaintiff was questioned by the trial court about his satisfaction with his counsel, about his understanding that the state had the burden of proof, about his understanding that he was entitled to a trial, and about the probable consequences of his plea. He was also asked directly whether he was induced or influenced to plead guilty and whether his plea was of his own free will. In short, the plaintiff's claim that the trial court's inquiry was not adequate to determine the voluntariness of the plea is without merit.

There remains the state's contention that the plaintiff waived his right to raise these claims because he did not make them on direct appeal. This need not be considered in-

asmuch as we have found that the plaintiff's claims are without merit.

Although the determination that the plaintiff's guilty plea was voluntarily and intelligently made is dispositive of the appeal, to be certain that there was no injustice to the plaintiff at the time of sentencing, we have reviewed the entire transcript of the proceedings of June 2 and June 16, 1967. In addition, the entire record and briefs of the former appeal were also reviewed. The improper remarks made by counsel on June 2, 1967, were a repetition of what had already been told to the court in substance by the state's attorney. All of this was contained in great detail in the presentence report. The sentence imposed by the court on June 16, 1967, was an adoption of the recommendation made by the state's attorney. After the aforementioned thorough review, we are unable to find any indication of prejudice in respect to the sentencing of the plaintiff.

There is no error.

In this opinion the other judges concurred.

JUDGMENT BELOW

This appeal by the petitioner from the judgment of the Superior Court was filed with the Clerk of said Court on the 3rd day of March, 1970, and said appeal came thence to the 8th day of June, 1970, when the appellant filed his assignment of errors, as may appear in the certified transcript of record on file in this Court, and said appeal came thence to this Court at its term held at Hartford on the first Tuesday of April, 1971, and thence to the present term when the parties appeared and were fully heard.

And now this Court finds there is no error.

Whereupon it is adjudged that said judgment be affirmed.

Date of Judgment: June 25, 1971.

By the Court,
THOMAS H. ABRAHAM
Clerk

EXHIBIT 1, HABEAS CORPUS

#28080

STATE

V.

ANDREA SEJERMAN

SUPERIOR COURT

HARTFORD COUNTY

APRIL 18, 1967

BEFORE HONORABLE RAYMOND J. DEVLIN, JUDGE

JOHN D. LABELLE, ESQ.

FOR THE STATE

PETER J. ZACCAGNINO, JR., ESQ.
FOR THE ACCUSED

MR. LABELLE: May inquiry be made as to change of plea, to the first and third counts, Your Honor?

ASSISTANT CLERK PAUL LEVINE: Andrea Sejerman, on April 4th, 1967, to an information charging you with conspiracy to obtain money by false pretenses, five counts, you entered a plea of not guilty and elected a trial by jury of twelve. Do you now wish to withdraw your plea and election as to the first and third counts?

THE ACCUSED: Yes.

MR. LEVINE: Do you waive reading of the information?

MR. ZACCAGNINO: Waive the reading.

MR. LEVINE: Andrea Sejerman, to the second count of the information charging you with conspiracy to obtain money by false pretenses, what is your plea, guilty or not guilty?

THE ACCUSED: Not guilty. Guilty.

MR. LEVINE: To the third count of the information charging you with conspiracy to obtain money by false pretenses what is your plea, guilty or not guilty?

THE ACCUSED: Guilty.

MR. LABELLE: In view of those pleas, Your Honor, the State will nolle the other counts. They all occurred the same day as part of the same set of circumstances.

THE COURT: All right, one, four and five are nolle.

MR. LABELLE: May this be assigned for presentence report and be set down for disposition on the 19th of May?

THE COURT: Pre-sentence investigation ordered. 19th of May.

MR. ZACCAGNINO: If Your Honor please, I hope, I am making the request from some other counties to have them sent here. If they are not completed by that day I may have to request a continuance, because there are some other counties that have matters pending on the same charge.

THE COURT: All right.

EXHIBIT 2, HABEAS CORPUS

#28081

STATE

V.

SANDRA BAKER

}

SUPERIOR COURT

HARTFORD COUNTY

APRIL 18, 1967

BEFORE HONORABLE RAYMOND J. DEVLIN, JUDGE

JOHN D. LABELLE, ESQ.

FOR THE STATE

PETER J. ZACCAGNINO, JR., ESQ.

FOR THE ACCUSED

MR. LABELLE: May inquiry be made as to change of plea to the first and third counts?

ASSISTANT CLERK PAUL LEVINE: Sandra Baker, on April 4th, 1967, to an information charging you with conspiracy to obtain money by false pretenses in five counts, you entered a plea of not guilty and elected a trial by a jury of twelve. Do you now wish to withdraw your plea and election as to the first and third counts?

THE ACCUSED: Yes.

MR. LEVINE: Do you waive reading of the information?

MR. ZACCAGNINO: Waive the reading.

THE COURT: Is the mother here?

MR. ZACCAGNINO: Yes, the mother is here. Step forward.

MR. LEVINE: Sandra Baker, to the first count of the information charging you with conspiracy to obtain money by false pretenses what is your plea, guilty or not guilty?

THE ACCUSED: Guilty.

MR. LEVINE: To the third count of the information charging you with conspiracy to obtain money by false pretenses what is your plea, guilty or not guilty?

THE ACCUSED: Guilty.

MR. LABELLE: The State will nolle the other three counts, Your Honor, for the same set of circumstances.

MR. ZACCAGNINO: There's also other matters that will need transfer to this county also.

MR. LABELLE: May this go down for May 19th?

THE COURT: Pre-sentence investigation ordered. Continued until the 19th.

EXHIBIT 3, HABEAS CORPUS

#28080

STATE

V.

ANDREA SEJERMAN

}

SUPERIOR COURT

#28081

STATE

V.

SANDRA BAKER

}

HARTFORD COUNTY

JUNE 2, 1967

BEFORE HONORABLE RAYMOND J. DEVLIN, JUDGE

GEORGE A. SILVESTER, ESQ.

FOR THE STATE

PETER J. ZACCAGNINO, JR., ESQ.
FOR THE ACCUSED

MR. SILVESTER: If Your Honor pleases, both accused are represented by Attorney Peter Zaccagnino. Now, let's see, in the case of Sejerma she is twenty-one. Is that so?

MR. ZACCAGNINO: Yes, Your Honor.

MR. SILVESTER: And in the case of Sandra Baker she is a minor, nineteen.

MR. ZACCAGNINO: Her mother is here, Your Honor.

MR. SILVESTER: Now as I understand the situation, if Your Honor pleases, at a prior time both accused have pled guilty to charges of conspiracy to obtain money by false pretenses in two counts and the matter's been referred to the Adult Probation Department for pre-sentence investigation and report. In the meantime some warrants have been received from — is it Litchfield County?

ASSISTANT CLERK PAUL LEVINE: Yes.

MR. SILVESTER: On which they have to be put to plea this morning.

MR. LEVINE: Yes. This is Litchfield County #4502, State of Connecticut versus Sandra M. Baker.

MR. ZACCAGNINO: We'll waive the reading.

MR. LEVINE: Sandra M. Baker, to the first count of the information charging you with uttering and publishing a false, forged and counterfeited document and signature with intent to defraud in violation of 53-346, what is your plea, guilty or not guilty?

THE ACCUSED: Guilty.

MR. LEVINE: To the second count of the information charging you with uttering a forged instrument what is your plea, guilty or not guilty?

THE ACCUSED: Guilty.

MR. LEVINE: To the third count of the information charging you with uttering a forged instrument what is your plea, guilty or not guilty?

THE ACCUSED: Guilty.

MR. LEVINE: To the fourth count of the information charging you with conspiracy what is your plea, guilty or not guilty?

THE ACCUSED: Guilty.

MR. LEVINE: This is Litchfield County #4503, State of Connecticut versus Andrea Sejerma.

MR. ZACCAGNINO: We'll waive the reading.

MR. LEVINE: Andrea Sejerman, to the first count of the information charging you with uttering a forged document what is your plea, guilty or not guilty?

THE ACCUSED: Guilty.

MR. LEVINE: To the second count of the information charging you with uttering a forged instrument what is your plea, guilty or not guilty?

THE ACCUSED: Guilty.

MR. LEVINE: To the third count of the information charging you with uttering a forged instrument what is your plea, guilty or not guilty?

THE ACCUSED: Guilty.

MR. LEVINE: To the fourth count of the information charging you with conspiracy what is your plea, guilty or not guilty?

THE ACCUSED: Guilty.

MR. SILVESTER: If Your Honor pleases, as far as I can determine the nature of the involvement with respect to both of these young ladies is that they became associated with one Charles Dukes who is co-accused awaiting sentencing in this court, and Charles Dukes had paraphernalia with respect to checks and money orders and they agreed to cash these checks with false credentials furnished by him. I can't tell Your Honor the extent of the amount that is involved here.

The records of the accused in the case of Sejerman is attached to the pre-sentence report and apparently she has no prior convictions, and in the case of the accused Baker

her record is set out on page two of the pre-sentence report, and apparently here, too, there are no prior convictions.

I'm sorry, I'm advised, Your Honor, there are warrants from Fairfield County also.

MR. LEVINE: This is Fairfield County #26756, State versus Sandra Baker.

MR. ZACCAGNINO: We'll waive the reading.

MR. LEVINE: Sandra Baker, to the first count of the information charging you with obtaining money under false pretenses what is your plea, guilty or not guilty?

THE ACCUSED: Guilty.

MR. SILVESTER: How many counts is that?

MR. LEVINE: I think there are four.

MR. SILVESTER: If Your Honor pleases, I don't know exactly what my authority is, but if she pleads to one count the State would be willing to nolle the other three counts.

THE COURT: I think we ought to get them all on the record and treat them as one.

MR. SILVESTER: Very well.

MR. LEVINE: To the second count of the information charging you with obtaining money by false pretenses what is your plea, guilty or not guilty?

THE ACCUSED: Guilty.

MR. LEVINE: To the third count of the information charging you with obtaining merchandise and money what is your plea, guilty or not guilty?

THE ACCUSED: Guilty.

MR. LEVINE: To the fourth count of the information charging you with obtaining money under false pretenses what is your plea, guilty or not guilty?

THE ACCUSED: Guilty.

MR. LEVINE: This is Fairfield County 26 — 16758, Andrea Sejerman

MR. ZACCAGNINO: Waive the reading.

MR. LEVINE: Andrea Sejerman, to the first count of the information charging you with obtaining money under false pretenses what is your plea, guilty or not guilty?

THE ACCUSED: Guilty.

MR. LEVINE: To the second count of the information charging you with obtaining money under false pretenses what is your plea, guilty or not guilty?

THE ACCUSED: Guilty.

MR. LEVINE: To the third count of the information charging you with obtaining money under false pretenses what is your plea, guilty or not guilty?

THE ACCUSED: Guilty.

MR. SILVESTER: Are there some from New Haven there also, Mr. Clerk?

MR. LEVINE: I don't see any from New Haven.

MR. SILVESTER: May I have a moment, if Your Honor please? I am advised, Your Honor, there are other outstanding warrants, especially from New Haven County, which apparently haven't been forwarded to Hartford.

If Your Honor pleases, the presentence reports are before Your Honor. There has been no discussion with respect to penalty, and the matter is being submitted to Your Honor without recommendation.

MR. ZACCAGNINO: If Your Honor pleases, with respect to these two girls, both of them have had psychiatric help in the past, and both of them have been to a psychiatrist after this arrest, and I received the reports too late to file them with the probation reports. I'd like to have them submitted to Your Honor for perusal.

MR. SILVESTER: No objection.

THE COURT: All right.

MR. ZACCAGNINO: If Your Honor pleases, as a result of this arrest Andrea Sejerma spent thirty-three days in jail waiting to make bond, and Sandra Baker spent sixty days in jail. As Your Honor knows from looking at the probation report and from the circumstances involved, both of them came under the influence of Charles Dukes. Now how they could get in a position to come under the influence of somebody like him, if Your Honor pleases, creates the problem here that I think is the cause of the whole situation.

Both these girls left their homes, came under the influence of Dukes and got involved. I think, Your Honor, though, that the one thing I might say about both of them that should stand in their good stead, as a result of their willingness to cooperate with the State Police they capitulated Dukes into making a plea. I think. Your Honor, since I was on both sides of the case, having been on the other side on the other case I can tell Your Honor that it was these girls that because of their refusal, not refusal, not to cooperate with Dukes and to testify against him that capitulated him into taking a plea on which he will shortly be removed from

society, so I think this, Your Honor, the only question here is what to do with these girls.

I have spent a lot of time with both their parents. Their parents for the period of time in which they were away did lose control of these girls, but both the parents, both mothers of these two girls are in the courtroom today, and both of them have a great concern for their daughters. I have advised them from the beginning it was my thought the only way they could help themselves the most was going back with their parents, but here they stand before Your Honor for punishment. It's up to Your Honor to decide what to do. It's easy to say they are involved with a lot of crimes, let's send them to the State Farm, that's where they should be. It would seem at first blush that's where they should go.

Both of them have no records to speak of. The record they did have, obviously, looking at the charge one knows it had to be involved with Dukes. Also both cases were nolle, because of a similar circumstances that involved them the case was nolle and they weren't convicted. The only things that stand before Your Honor are these particular offenses.

I would say, Your Honor, apparently Andrea needs some out-patient clinic help. I showed the report to her mother and she has agreed to help her. If Your Honor were to feel that perhaps the State Farm was not the place for these girls I think, Your Honor, that normally, under normal circumstances that the first time that these cases such as this come up before Your Honor — I realize there's a lot of charges, but Your Honor knows from Your Honor's own experience on the bench, when there is a great number of offenses they are like one instance because after they are caught it ceases the activity, in other words, one or twenty. Granted, society has been injured more by twenty, however Your Honor can treat them like one transaction, one instance, because once the arrest takes place and the mental processes go on about

attempting to rehabilitate themselves it ceases the activity. It's like the housewife who thinks she's going to steal something, gets caught once and doesn't do it again, doesn't repeat.

I think, Your Honor, with the great interest the parents have shown in the girls it may be there is some hope for the girls. I think since both of them have been in jail and spent some time in jail I'd respectively recommend, Your Honor, that they be given a long sentence in the State Farm for Women, not just a short one, and be put on probation. In this way the State will have great control of them. If they go to the north end or some place they are told to stay out of they will do their term in the State Farm.

We have a probation department. If there is anybody that can be helped I think it's the first offender, the one that comes for sentencing the first time, and if they can't help the first offender I don't know who they can help. Both mothers are here and they both express great concern that they can help these girls. I think with the proper psychiatric help they may open up their eyes that the easy life is not the easy life they thought it would be.

It's most difficult. I know Your Honor will have great difficulty in what to do. As I say, there is more to the case than meets the eye. I think the one thing is so important, that they had enough courage to say they were willing to testify. That's always been their position with the police, and as a result of their statements to the police and their cooperation with the police which led to the downfall of Dukes, and of course, Your Honor, without going into great detail, it's obvious from looking at the report who the most culpable person is because he had all the instruments with which to dupe these girls.

Both of them, looking at the psychiatric reports Your Honor can see both are easily led, easily swayed. Like the

person that gets involved with narcotics they are all the same cut, they are easily talked into these things. I don't say this is in any way at all, Your Honor, a justification for what they did, but it certainly should go to mitigation of punishment. I think the one thing I'm trying to impress upon Your Honor is that these girls did tell the police they would testify and they are willing to testify in any other matters pending against Dukes in which they are involved, which I think, Your Honor, shows that they have the knowledge that they did wrong and are willing to face what is coming to them, but part of the rehabilitation comes, Your Honor, when they first realize that they have done something wrong and they are willing to stand on their two feet and face what is to be done with them.

I do think both of them have received a great amount of publicity and a great amount of anguish. What is to happen to them? Your Honor can see from the psychiatric reports and all the other reports. I just hope Your Honor takes into consideration the fact they have spent some time in jail. I think the taste of jail has taught them more than anything else that could have happened. I think they have learned a lesson and are entitled to one chance to put them back into society, and get this one chance, see if they can go straight. I think it might be more of a weapon against them, a heavy sentence over their head and probation, than actually sending them to jail or the State Farm.

THE COURT: Counsel, my only problem is whether to send them to jail or the State Farm. What do you want?

MR. ZACCAGNINO: I think, Your Honor, they both would rather go to jail than State Farm. This way they can be closer to their parents and all the other things.

THE COURT: One of them spent sixty days in jail and the other thirty?

MR. ZACCAGNINO: Yes, Your Honor. Andrea spent thirty-three, and Sandra sixty.

THE COURT: Do you want to say anything, Sandra?

THE ACCUSED BAKER: No, Your Honor.

THE COURT: Do you want to say anything, Andrea?

THE ACCUSED SEJERMAN: No, Your Honor.

THE COURT: Sentence in both cases will be one year in jail, the execution of which will be suspended after serving six months, probation for a period of three years. That will apply concurrently on all the charges.

EXHIBIT A — HABEAS CORPUS — RECORD ON APPEAL IN CRIMINAL CASE.

In the Superior Court of the State of Connecticut, Hartford County, May Term, A.D. 1967. John D. LaBelle, State's Attorney for the County of Hartford, accuses Charles O. Dukes of Hartford, Connecticut, of Violation of Uniform State Narcotic Drug Act, and charges that at the City of Hartford, on or about the 14th day of March, 1967, the said Charles O. Dukes did possess, have under his control, sell, or dispense narcotic drugs, to wit: heroin, an opium derivative (as defined in Section 19-244 of the General Statutes of Connecticut), in violation of Sections 19-246 and 19-265 of the 1965 Supplement to the General Statutes.

JOHN D. LABELLE
State's Attorney

Amendment to Information

The information is herein amended by adding the following count:

Second Count

And the said Attorney further accuses the said Charles O. Dukes of Larceny, and charges that at the City of Hartford, on or about the 14th day of March, 1967, the said Charles O. Dukes stole various articles of a value in excess of Two Hundred Fifty Dollars (\$250) but less than Two Thousand Dollars (\$2,000), in violation of Section 53-63 of the 1965 Supplement to the General Statutes, and Section 53-65 of the General Statutes, Revision of 1958.

JOHN D. LABELLE
State's Attorney

STATE OF CONNECTICUT

No. 28358

STATE

V.

CHARLES O. DUKES

SUPERIOR COURT

HARTFORD COUNTY

JUNE 16, 1967

HON. RAYMOND J. DEVLIN, JUDGE

John D. LaBelle, State's Attorney for the County of Hartford accuses Charles O. Dukes of Hartford of Violation of Uniform State Narcotic Drug Act at the City of Hartford on or about March 14, 1967 in violation of Sections 19-246 and 19-265 of the 1965 Supplement to the general statutes as charged in the information and the said attorney further accuses the said Charles O. Dukes of Larceny (value in excess of \$250.00 but less than \$2000.00) at the City of Hartford on or about March 14, 1967 in Violation of Section 53-63 of the 1965 Supplement to the general statutes, and Section 53-65 of the general statutes, Revision of 1958 as charged in the second count of the amendment to information as on file will appear.

To both counts of said information on May 16, 1967 the said Charles O. Dukes pleaded and said that he was guilty.

Whereupon this court doth accordingly adjudge the said Charles O. Dukes guilty as charged in both counts of said information and that he be imprisoned in the Connecticut State Prison for not less than five (5) years and not more than ten (10) years on the first count and two (2) years on the second count.

DOMINIC A. DiCORLETO
Clerk

Appeal

In the above entitled action, the defendant appeals to the Supreme Court from:

- (a) The judgment rendered therein;
- (b) The denial by the Court of the defendant's request for a change of plea from "Guilty" to one of "Not Guilty";
- (c) The Court's denial of the defendant's request for a trial;
- (d) The denial of the Court of the motion of the attorney to withdraw his appearance on behalf of the defendant; and
- (e) The denial of the Court of the defendant's motion to obtain substitute counsel to represent him.

The Defendant — CHARLES O. DUKES
By: ALPHONSE C. FASANO
His Attorney

Filed June 26, 1967.

Request For Finding

The appellant in the above entitled case respectfully requests a finding of facts for an appeal to the supreme court of errors and submits the draft finding hereto annexed.

The questions of law which he desires to have reviewed are:

1. Whether the court erred in denying on May 9, 1967 defendant's request to engage other private counsel.

2. Whether the court erred on May 9, 1967 in refusing to grant counsel of records motion to withdraw.

3. Whether the court erred on May 9, 1967 in refusing to grant the defendant's request for a continuance.

4. Whether the court erred on May 9, 1967 in ordering the defendant to be put to plea in the light of all the circumstances.

5. Whether the court erred on May 9, 1967 under the circumstances in ordering the defendant to proceed with the trial of the case on May 10, 1967.

6. Whether the court erred on May 9, 1967 in ordering defendant to proceed with the trial of the case on May 10, 1967 when counsel for the accused represented to the court that he was notified on Monday, May 8, 1967 to present the accused on May 9, 1967 and counsel for the accused believed that the defendant was to be presented for plea.

7. Whether the court erred on June 16, 1967 in refusing permission to counsel of record for the accused to withdraw as attorney for the defendant in the light of the attorney's representations to the court.

8. Whether the court erred on June 16, 1967 in denying the defendant's request to withdraw his plea of guilty in the light of all the circumstances and representations.

9. Whether or not the plea of guilty by the accused was a voluntary one free of any undue influence in the light of the disclosure made to the court on June 16, 1967.

10. Whether the defendant was denied his constitutional guarantees under the Fifth and Sixth Amendments of the United States Constitution to have the assistance of counsel of his own choosing for his defense.

11. Whether under the circumstances, the defendant has been denied due process of law as guaranteed to him under the United States Constitution.

12. Whether the defendant was denied his constitutional right to engage private counsel at his own expense and be given a reasonable opportunity to prepare for trial.

The Defendant

By: ALPHONSE C. FASANO

His Attorney

Filed August 1, 1967.

Draft Finding

PART I

The following facts are found:

* * *

6. When the Court convened, defendant's counsel addressed the Court and represented that between the night of May 8, 1967 and the morning of May 9, 1967, he had had a number of conversations with the defendant as a result of which he was going to petition the Court to formally withdraw from the case because of a conflict between counsel of record and the defendant. (T. 1-2)

7. Defendant, whom counsel was representing were in disagreement on a matter which basically goes to the heart of counsel's representation of the defendant.

8. Defendant's counsel further represented to the Court that in good conscience and in fairness to the defendant, who had not yet been put to plea and who was to answer to a very serious charge and with counsel's difference with

the defendant on a matter that may go to the heart of representing the defendant, counsel's motion to withdraw should be granted. (T. 2)

9. Counsel further represented to the Court in support of his request to withdraw that defendant may get other counsel; that because of the very basic position of an advocate in behalf of a defendant who must believe in the cause in which he is addressing himself and there are some things in which counsel and defendant are in disagreement which may prejudice the defendant. (T. 2-3)

10. The State's Attorney stated to the Court that if other counsel appears, ready to go to trial on May 9, 1967, he would have no objection, and until other counsel appears, there is no basis to withdraw and the State was ready to try the case that day. (T. 3)

11. Defendant's counsel represented to the Court that the State's Attorney called him on Monday, May 8, 1967 and informed him to be ready on Tuesday, May 9, 1967; that he understood that to mean to be ready to plead on Tuesday morning. (T. 10-11)

12. Counsel then represented to the Court that defendant either wants to represent himself or get counsel outside the County in whom defendant can have more confidence. (T. 11)

13. That the defendant personally stated to the Court that he did not want local counsel; that he wanted an opportunity to hire outside counsel. (T. 13)

14. The Court stated to the accused that it was late to bring this matter up; that the State is ready for trial; that he was notified for trial and so the trial will proceed. (T. 13)

15. The defendant replied to the Court that he had not been put to plea. (T. 13)

16. The Court stated to defendant that he will be put to plea if the trial is to go forward. (T. 13)

17. The Counsel then requested a continuance of one day in order to give defendant a chance to go over the case, read the transcript, advise him, get other counsel for him, or do something to help defendant; defendant's counsel further urged that he does not feel that he can do justice to defendant; that that does not mean that defendant cannot engage other counsel who may hold views different from those of counsel; that he will try to assist defendant to engage other counsel because defendant cannot try a case of this nature by himself. (T. 14-15)

18. The Court stated to counsel that it is not allowing him to withdraw.

* * *

21. On May 16, 1967, defendant was presented at the Criminal Session of the Superior Court for Hartford before the Honorable Sidney A. Johnson, Judge, for a change of plea to an amendment to the information. (T. of 5/16/67 p. 1)

* * *

23. Defendant entered a plea of Guilty to the charge of violation of Uniform State Narcotic Drug Act and to an amended information charging defendant in the second count with larceny. (T. 5/16/67 p. 3)

24. The matter was then referred to the probation department for pre-sentence report and continued to June 2, 1967. (T. of 5/16/67 p. 3)

25. On June 2, 1967 the pre-sentence report was not ready and the matter was continued to June 16, 1967. (T. of 6/2/67 p. 1)

26. On June 16, 1967, defendant was presented for sentence before the Honorable Raymond J. Devlin, a Judge of the Superior Court at the Superior Court for Hartford County and with the defendant appeared Peter J. Zaccagnino as his counsel.

27. Attorney Zaccagnino addressed the Court stating that defendant had advised him that he has other counsel from New Haven; that he did not wish to represent defendant if defendant had no confidence in him; (T. of 6/2/67 p. 1); that Attorney Fasano was tied up in Court and is requesting a continuance of one week; that in accordance therewith, Attorney Zaccagnino moved for a continuance to Tuesday; that in view of the serious nature of the charges, defendant should have counsel of his own choosing (T. 6/2/67 p. 1); that defendant stated to Attorney Zaccagnino that he did not have confidence in his handling of the matter and that he wanted Attorney Fasano to enter the case. (T. 6/16/67 pp. 1-2)

28. The Court then inquired what other counsel could do that present counsel could not do. (T. 6/16/67 p. 2)

29. The defendant addressed the Court and stated that he was most interested in justice in this case, that he had spoken to about twenty attorneys in Hartford who were not interested in entering the case to represent the defendant and that he would get more justice by hiring out of town counsel. (T. of 6/16/67 p. 3)

30. Attorney Zaccagnino then informed the Court that defendant wanted to change his plea; that that is the reason he hired new counsel; that while this is the first heard of

it, he did suspect it because of the problem when he did enter his plea; that maybe he had been a little forceful with the defendant. (T. of 6/16/67 pp. 4-5)

31. The Court then asked defendant what he had to say and defendant stated that he would like to change his plea; that at the time he entered his plea, he had just come out of the hospital; that he had been unconscious for three days; that on the day that he entered his plea, he did not realize at the time actually, to what he was pleading; that since then, he has been a patient, taking mental examinations at the Hartford Institute of Living and that the psychiatrist had informed him that he needed psychiatry treatments (T. of 6/16/67 p. 5)

32. The Court denied the defendant's request to change his plea.

33. Defendant's acting counsel, Peter Zaccagnino represented to the Court that at the time defendant changed his plea, other pending cases were going to be disposed of on the same basis consecutive or concurrent sentences would be imposed; that he had discussed with defendant that it would be in his best interest to change his plea because he would then have no other pending matters to confront. (T. 6/16/67 p. 6)

34. The Court then inquired of Dukes what he had to say and the defendant stated that he was flabbergasted; that he was puzzled; that he is not guilty of the charges. (T. of 6/16/67 p. 7)

* * *

PART III

The following rulings were made:

44. On May 9, 1967, Attorney Peter J. Zaccagnino, who had entered an appearance on behalf of the defendant,

Charles O. Dukes, moved for permission to withdraw as counsel for the defendant and the following took place:

MR. LABELLE: This is a matter for trial, Your Honor. May a Jury panel of thirty-five be ordered? Counsel wishes to discuss some matter with me, I don't know what it is, but while recess is ordered may a jury panel be called.

THE COURT: Do you want them called down immediately?

MR. LABELLE: If they get one, as soon as we get one we'll know what we are going to do.

THE COURT: Very well, panel of thirty-five may be requested. There will be a short recess.

LATER:

MR. ZACCAGNINO: If it please the Court, Your Honor, on this matter that is now pending before the Court, State of Connecticut versus Charles Dukes, between last night and this morning, Your Honor, we have had a number of conversations with Mr. Dukes, and I think that I am going to petition the Court to formally withdraw from this case because there happens to be a slight conflict between my client and myself, and it's not financial, Your Honor, it is one basically that goes to the heart of my representing him, and I think, Your Honor, in fairness to the defendant, he hasn't been put to plea as yet, and this case has just been bound over three or four weeks ago. it's a very recent arrest, that in good conscience and in order for this man which is a very serious charge, as Your Honor knows, that I think — he tells me this morning that he wants to represent himself and he so wants to represent that to the Court, and in the recess I told him the foolishness of his ways, to try a jury case by himself.

However, I don't know what his opinion is right now, but he also tells me he may get additional counsel. I don't know what the Court's position is on that. I'm going to ask Your Honor, if Your Honor wants me to put it in writing I will, to withdraw. The defendant is here, and, Your Honor, he has full knowledge of this and wants to represent to the Court that is so. We do have this difference that may go to the heart of my representing him.

I know Mr. LaBelle is opposing my withdrawing at this date, but as I say to the Court the man has not even been put to plea as yet and it seems to me that the motion should be granted because of the very basic position of an advocate in behalf of a defendant who he must believe in the cause in which he is speaking for in many ways and there are some things here that we have a disagreement on with respect to the matter which may in some way prejudice the defendant. I just think he should have at least -- the trial should be conducted in such a manner where I don't feel as his attorney perhaps something he is doing is wrong. That is the whole issue, if Your Honor please. Not wrong, with respect to the arrest, I'm not talking about that, but actually the trial, the conduct of same.

MR. LABELLE: Well, if other counsel appears, Your Honor, ready to go to trial today, I have no objection to the withdrawal. Until other counsel appears it seems to me there isn't any basis to withdraw. We are ready to try the case today. (T. of 5/9/67 pp. 1, 2, 3)

Now the next thing is, Your Honor, that the defendant now wishes to address the Court, Your Honor, on the matter which I spoke to Your Honor about, and I would just like to say this to the Court --

THE COURT: He hasn't been put to plea.

MR. ZACCAGNINO: No, he hasn't been put to plea yet, Your Honor, and that is the issue here is about my motion to withdraw, that I understand Mr. LaBelle's position is the reason for his particular position but I also understand, Your Honor, this defendant's position because it's an unusual situation, Your Honor, on a case that is so new that the same day of plea that you go to trial. I agree Mr. LaBelle called me on Monday. He said he called me earlier, I'm sure he did. If he said he called me he must have called my office. I wasn't there. And he told me to be ready but it's an unusual circumstance when they tell me to be ready and the man hadn't pled, I took it he's got to be ready to plead on Tuesday morning. I knew it was going to be a trial and so advised the defendant. I've been waiting to address the Court because the Court has been busy on other matters. He tells me he either wants to represent himself or get counsel outside of the county that he can have more confidence in for some reason or other. Now I don't know what the reason is but he would like to address the Court before he is put to plea so he has the right to counsel. If he is not going to have that right of other counsel to get somebody to represent himself then I think, Your Honor, whatever he wants to say I'd like to have him address the Court because if Your Honor grants my motion he'll be without counsel for the moment. Do you want to address the Court?

THE ACCUSED: Judge, Your Honor, I'd like to ask the Court —

THE COURT: I can't hear you.

THE ACCUSED: I'd like to ask the Court several questions.

THE COURT: I still can't hear you.

MR. ZACCAGNINO: Speak up.

THE ACCUSED: I'd like to ask the Court several questions to be permitted. Number one, I would like to ask for the prosecutor of this particular case to withdraw from the case because if I try the case, I intend to cross-examine him concerning this case and I'm afraid it's going to cause a conflict of interest. I don't think it would be fair to the accused.

MR. LABELLE: If Your Honor please, this man is not going to run this court as long as I have anything to say to the Court about it. He knows that this case is ready to go to trial and counsel also knew this as long ago as at least a week because his office was notified by my office on several occasions during the middle of last week, Wednesday and Thursday.

Now if this man wants to try his own case let him try his own case and let counsel sit with him and advise him if he wants to try his own case. And if he has other counsel he wants to get in place of Mr. Zaccagnino then Mr. Zaccagnino can leave but as far as the State is concerned we are ready to go to trial and this story about him going to cross-examine me in this case is news to me. I don't intend to be a witness so I don't think he's going to cross-examine me.

THE COURT: Well, we'll take that matter up if and when we try the case. What is your next point?

THE ACCUSED: Number two, Your Honor, with local counsel I am afraid, well, I know there is going to be resentment. I have reasons to believe that through conversations, and I'd like the opportunity to hire an attorney from another state that don't have no knowledge of the case, of this specific case. Otherwise I feel as though that is the reason that I intend to try my own case in the event that the Court doesn't grant it.

✓
THE COURT: You wish to try the case yourself, is that it?

THE ACCUSED: If the Court doesn't grant me opportunity to hire an attorney out of the State, sir, because I don't want no resentment upon any attorneys, local attorneys.

THE COURT: Well, at this time it's rather late to bring that in. The State says it's ready for trial. You were notified for trial so we will proceed with the trial. Whether or not I will allow counsel to withdraw is another thing.

THE ACCUSED: Yes, sir, I haven't even been put to plea on this.

THE COURT: Well, you'll be put to plea if we go forward.

THE ACCUSED: Well, that's all at the present time. Thank you. (T. of 5/9/67 pp. 10, 11, 12, 13)

* * *

THE COURT: Well, I think what we will do is present him for plea, give him the opportunity, then we won't present any evidence today but we'll pick a jury today and I will hold you in attendance, counsel.

MR. ZACCAGNINO: If Your Honor pleases, is Your Honor instructing me that —

THE COURT: I'm not allowing you to withdraw at this time.

MR. ZACCAGNINO: At this time I don't know whether, Your Honor, it meets with this man's approval, because it may Your Honor —

THE COURT: He says he wants to defend himself.

MR. ZACCAGNINO: Yes, Your Honor. I think he does want to defend himself as opposed to me representing him in the matter. I don't know. If it meets with his approval I suppose he has a right to defend himself.

THE COURT: He'll be entitled to ask questions of the jurors, of the panel, if he wishes, and then we will go to trial on the factual issues tomorrow. Would you like a short recess?

MR. ZACCAGNINO: Yes, Your Honor. Excuse me. I think it might be helpful.

(Short recess.)

LATER:

THE COURT: First, do you want to present the person for plea, counsel?

MR. LABELLE: Yes, May he be put to plea, Your Honor.

THE COURT: Put him to plea and election.

MR. ZACCAGNINO: We'll waive the reading of the information.

MR. O'BRIEN: Charles O. Dukes, how old are you?

THE ACCUSED: Thirty-two year old.

MR. O'BRIEN: Charles O. Dukes, the State of Connecticut charges you with violation of the Uniform State Narcotic Drug Act. How do you plead?

THE ACCUSED: Not guilty.

MR. O'BRIEN: Do you elect a trial by Court or by Jury?

THE ACCUSED: By jury of twelve.

THE COURT: Very well. (T. of 5/9/67 pp. 1, 2, 3, 10, 11, 12, 13, 15, 16)

* * *

45. On May 9, 1967, the defendant moved that the matter be continued to the following morning and the following took place:

MR. ZACCAGNINO: If Your Honor pleases, I just might like to say one thing in conclusion. I think this man has other counsel besides myself involved in another matter, and I realize that the Court is being tied up, but I think in view of the seriousness of the matter, in view of my position, I was going to ask for a continuance till tomorrow morning and two things may occur.

One, it may be that my position, I might be able to convince my client of. If I can't at least he will have overnight to get counsel. I think it's not an unreasonable delay of the court because the issues involved are far more serious than any inconvenience in this instance to the court. I realize this is inconvenient. I realize Mr. LaBelle told me this but between last night and this morning a great change of position has taken place between my client and I in the matter so in view of that this is something we didn't plan to delay the court, it just came about and I know one thing being part of the case that I can't see any justification, Your Honor, for not allowing that time till tomorrow morning because it may be if it doesn't develop like I would like it to develop at least this man will have a chance to go over this case, read the transcript with me, I'll advise him, get other counsel here or do something to help him. I don't hold any plea for delay of the court. I sat here for three days

waiting for the court to be open to get to this point. I've been here Tuesday, Wednesday and Thursday. I didn't do anything in my office all three days. I say to Your Honor I have been here. I don't think I have unduly delayed the court and I don't think this man has. I think we have come now to the position where Your Honor has to decide that with respect to this because I don't feel Your Honor that I can do this man justice in this particular issue and that doesn't mean that he can't get other counsel to feel differently than I do. I think he should have at least tomorrow morning. I don't think that is too much delay. I don't see the great pressure of one day when a man hasn't been put to plea. It's the first case I have had in this court where the man has been put to trial on the same day of plea. I do think it wouldn't inconvenience the court. I feel very uneasy about the situation I am presenting to the court, Your Honor, and I don't know that it might not resolve itself. I don't think I can resolve it but I do feel he should have this overnight. If he can't get other counsel I'll assist him in trying to get him other counsel because I don't think a man can try a case of this nature by himself.

MR. LABELLE: Of course that is a matter of the court's discretion, Your Honor. We are prepared to go forward today and the court might wish to consider in deciding this matter whether or not a jury if it is going to be a jury trial could be picked and testimony started tomorrow.

* * *

46. On June 16, 1967, the defendant through Mr. Zaccagnino, his counsel of record, stated to the Court that the defendant had advised counsel of record that he had engaged other counsel to represent him and that other counsel was elsewhere engaged and defendant requested a continuance for one week. The Court denied the motion and the following took place:

MR. LABELLE: 28358, Charles Dukes.

MR. ZACCAGNINO: If Your Honor please, prior to this man being sentenced in this particular matter, I discussed this momentarily with Mr. LaBelle. Mr. Dukes has advised me that he has other counsel from New Haven; Mr. Fazzano, who is representing him, and I don't intend in any way to delay the Court. I thought, if he has other counsel, I have no objection to getting out. In fact, I do not want to represent Dukes if he doesn't have any confidence in me. But Fazzano was tied up, Attorney Fazzano was tied up this morning and is requesting a continuance for a week, and I told Mr. Dukes the most I would do for him would be to put the motion to the Court and suggest it be continued until Tuesday. I think this, Your Honor, that if he has other counsel and because of the serious nature of the charges, that he should have counsel of his own choosing. If he has no confidence in me, I don't resent it personally. I understand his position. But I do feel that this is a very serious situation, and Mr. LaBelle wants to proceed this morning with sentencing. I don't quarrel with Mr. LaBelle on that point. I want to state my position to the Court so that Your Honor will know what his position is. He told me this morning that he felt that he didn't have confidence in my handling the matter, and he wanted Mr. Fazzano to come in, if that is the situation, Your Honor, as I say, I don't have any personal feeling on it, but I suppose there can be no — you know, I can't represent a man that — or if he doesn't have confidence in me is what I want to say. If he feels he wants Attorney Fazzano, I would like to state to the Court I have no objection; and as a matter of fact, I welcome it. I don't want to be dilatory because this man comes up this morning and he tells me he has another lawyer, but I feel it is so serious I don't know what to tell Your Honor except to tell Your Honor that I should be relieved as counsel when Mr. Fazzano —

THE COURT: What could other counsel do that you couldn't do?

MR. ZACCAGNINO: I don't know, Your Honor; but I do say this: That it's become a situation, Your Honor, that I can't quite understand either, and he feels, and I stated his position to Your Honor, so that Your Honor knows. And if he has anything he wants to say to your Honor, I suppose he ought to say it to you. I have said what I have got to say.

THE COURT: What do you want to say, Dukes?

THE ACCUSED: Well, I was —

THE COURT: I can't hear you. Speak up.

THE ACCUSED: I was most interested in justice in this case, and I spoke to maybe about twenty attorneys from Hartford, and nobody seemed to want to take the case, represent me, and it would be more justice to get more justice by hiring an attorney out of town, which I brought this out before certain reasons.

THE COURT: Well, you have a good attorney now. What is the objection to that?

THE ACCUSED: Well, I would rather have an attorney out of town for certain reasons of the case. Your Honor, sir —

THE COURT: Well, I think we ought to go on with it today.

MR. LABELLE: There has been no appearance.

THE COURT: No appearance been filed.

MR. LABELLE: It is my understanding from Mr. Fazano, who called my office this morning, called one of the

detectives, that he was just contacted last night. He doesn't know Dukes or anything about the cases. Now, no appearance has been entered. It is simply a disposition. It isn't a trial, and I don't see there is any reason for delaying it further. He's had plenty of opportunity when he was put to plea in this matter, and the court specifically asked him before he accepted the plea whether or not he was satisfied with his counsel. And at that time the plea was accepted, he indicated to the court that he was. I ask that the sentence be imposed in 28358.

THE COURT: The sentence will be imposed.

(T. of 5/16/67 pp. 1, 2 3)

* * *

47. On June 16, 1967 before the Honorable Raymond J. Devlin, a Judge of the Superior Court, the defendant moved for a change of plea which the Court denied and the following took place:

MR. ZACCAGNINO: He tells me now, Your Honor, he would like to change his plea, and I thought Your Honor would like to know that. I don't suggest that to the Court. He suggests it, and that is the reason he hired new counsel, and this comes as a surprise to me. This is the first I heard of it, but I had a suspicion, Your Honor, that this may take place because of the problem when he entered the plea. I was maybe a little forceful. However, Your Honor, it was all discussed with him, and he does feel, Your Honor, that the reason he went out of the county was because no lawyer would properly represent him in this matter in this county. I don't believe that, because I put a lot of hours in this case. However, he does tell Your Honor now that he does want to change his plea, and he better say it himself, because Your Honor better talk to him about it.

THE COURT: What do you want to say?

THE ACCUSED: Yes, Sir; I would like to change my plea, Your Honor. At the time I plead, I just came out of the hospital, I think it was a day, and I was unconscious for three days, and I didn't realize at the time actually what I was pleading to. And since then, I am a patient, taking a mental examination at the Hartford Institute of Living and also Dr. Harold, a heart specialist, and she said that, the psychiatrist said that I needed psychiatry treatments.

THE COURT: I will deny the motion.

MR. LABELLE: Your Honor has his record here, and I would simply say he's, so far as I am aware of, been involved in criminal activities in this county for a substantial period of time; and on the case, I would suggest by way of disposition on the first count not less than five no more than ten years in the State's Prison. On the second count, two years, making an effective sentence of not less than five no more than twelve years.

THE COURT: All right.

MR. ZACCAGNINO: Your Honor, it puts me at a slight disadvantage, but I will tell this to the Court: That at the time that he changed his plea, Your Honor, that some of these cases, Your Honor, were very tenuous at best, and it is my understanding that all of the matters were going to be disposed of on the same basis, consecutive or concurrent sentences would be imposed. I think this, Your Honor, that to sentence this man on one of these counts and for all of them, the reason, I induced him, I didn't induce him, I discussed with him his best possible interest to change his plea because he had so many matters pending. Now, proceeding on two matters, and all these matters are pending, I feel that if Your Honor does accept the recommendation, which is the five to

ten on the sentence, the minimum or the maximum on the narcotics case, he will have great additional time, and I don't know what to tell Your Honor other than the fact I wish Your Honor would make a note for the record, in the event I can talk to Dukes, that Your Honor does have knowledge of these other situations, these other crimes which are of a similar nature and of a weaker nature, and I would say to Your Honor the only thing in defense of Dukes, I realize his record is bad and his activities have been bad; however, when he changed his plea and entered his plea of guilty, he saved the State considerable cost and expense and time, because I think about five or six cases pending against him, they only had one or two cases that were of a strong nature, and I do think, Your Honor, that I feel having been his counsel, that I should make this fact known to Your Honor that it was a matter that Your Honor would normally, under normal circumstances, in a situation like this, enter concurrent sentences, if, in fact, it was so recommended by the State's Attorney; but since he doesn't want to plea to these other matters, I would like to make that note for the record, because I feel at some later date he may have to come back to this court and see Your Honor or see another judge on these other matters now pending before it.

THE COURT: What do you want to say, Dukes?

THE ACCUSED: I am rather flabbergasted really, because I didn't expect this this morning. It just puzzles me. I am not guilty of the charges. I am not guilty.

(T. of 5/16/67 pp. 4, 5, 6, 7)

PART IV

* * *

The defendant made the following claims:

48. On May 9, 1967, before the Honorable Sidney A. Johnson, a Judge of the Superior Court, the defendant's re-

quest for the withdrawal of counsel of record on behalf of the defendant to be replaced by additional counsel of the defendant's choice at the expense of the defendant because there existed a conflict between counsel of record and the defendant which goes to the heart of the representation of the defendant by counsel of record.

49. That the disagreement between counsel of record and the defendant was one which may prove prejudicial to the defendant if counsel of record is not permitted to withdraw his appearance.

50. That the defendant should be given an opportunity to engage other counsel and the matter continued for that purpose in view of the seriousness of the charges and in view of the fact that there would be no unreasonable delay or any inconvenience to the Court and further, in view of the fact that counsel of record understood that he was to present the accused for plea and not for trial.

51. That it was unreasonable to expect the defendant to proceed with the trial on the day he entered his plea in the light of all the circumstances and the seriousness of the charge.

52. On June 16, 1967, counsel of record requested and moved for a withdrawal of his appearance because the defendant had advised counsel of record that he had engaged other counsel who was not able to be present that morning due to another engagement and requested a continuance of the matter to the following Tuesday; that because of the serious nature of the charges, the defendant should have counsel of his own choosing and a reasonable continuance.

53. That on June 16, 1967 the defendant moved for a change of plea urging that when he entered his plea, he was forcefully prevailed upon to do so; that he had just come out

of the hospital where he had been confined in an unconscious condition for three days; that he did not realize at the time the plea was entered, to what defendant was pleading; that he is a patient taking mental tests at the Hartford Institute of Living and that he was in need of psychiatric treatments.

The Court denied each of the defendant's motions and overruled his claims of law.

Defendant,
By ALPHONSE C. FASANO
His Attorney

Filed August 1, 1967.

Finding

First

The following facts are found:

1. The accused was arrested in Hartford and charged with a violation of the Uniform State Narcotic Drug Act and receiving stolen goods.
2. After a hearing in probable cause on April 17, 1967, the defendant was bound over to the Superior Court on the narcotics charge and on the receiving charge. (Tr. pp. 1, 2)
3. The law firm of Zaccagnino, Linardos & Delaney appeared on behalf of the defendant in the Superior Court.
4. Counsel for the defendant was notified on Monday, May 1st, that the case was ready for trial, and was advised to be ready for trial. (Tr. p. 10)
5. The defendant knew that the case was ready for trial, and his counsel, Peter J. Zaccagnino, Jr., was present in court

awaiting trial on Tuesday, May 2nd, Wednesday, May 3rd, and Thursday, May 4th. (Tr. p. 14)

6. The case was reached for trial on Tuesday, May 9, 1967. (Tr. p. 13)

7. On May 9, 1967, John D. LaBelle, State's Attorney for Hartford at the Superior Court for Hartford County at Hartford, before the Honorable Sidney A. Johnson, a Judge of the said Superior Court, presiding at the Criminal Session of said court, stated to said court that the case of State v. Charles O. Dukes, case no. 28358 was ready for trial and requested a jury panel of 35 be ordered. (T. 1)

8. Charles O. Dukes, the defendant, was represented by Peter J. Zaccagnino, Jr., who was acting as defendant's attorney (T. 1)

9. Following the request of the State's Attorney made to the court for a jury panel, the State's Attorney advised the court that the defendant's counsel wished to discuss some matter with him, the nature of which he was not aware. (T. 1)

10. The court ordered that a panel of 35 jurors be supplied and declared a recess.

11. Following the recess, the court came into session (T. 1)

12. When the court reconvened, counsel for the defendant, Peter J. Zaccagnino, Jr., told the court that he thought he was going to petition the court to withdraw from the case since there happened to be a slight conflict between him and his client because his client told him he wanted to represent himself. (Tr. p. 2)

13. Counsel also told the court that his client had told him that he might get additional counsel. (Tr. p. 2)

14. Thereafter, counsel argued to the court concerning his Motion to Quash the information, his Motion for a Bill of Particulars, and his Motion to Suppress the evidence. (Tr. pp. 6-10)

15. After the motions were argued and decided, the defendant addressed the court and told the court that he was afraid that there was going to be resentment if he had local counsel. (Tr. p. 12)

16. The defendant then told the court that he would like the opportunity to hire an attorney from another state. (Tr. pp. 12, 13)

17. The defendant told the court that if he did not have an opportunity to hire an attorney from another state, that he would then like to try his own case. (Tr. p. 12)

18. Counsel for the defendant then requested a continuance of the trial until the next day, May 10th. (Tr. pp. 13, 14)

19. Thereafter, the defendant was put to plea and pleaded not guilty and elected a trial by a jury of twelve. (Tr. p. 16)

20. Counsel requested the court to continue the case to May 10th, the next day, in order for the defendant to get other counsel or to represent himself. (Tr. p. 17)

21. Counsel also advised the defendant and the defendant acknowledged that he understood that the case was to go forward for trial the next day, May 10th. (Tr. pp. 17, 18)

22. When the court continued the case to May 10th, the court asked the defendant if he understood that he was to proceed to trial the next morning and the defendant told the court that he understood that. (Tr. p. 18)

23. On May 10, the case was continued to May 16, for trial. (Tr. p. 1)

24. On May 16, the defendant appeared with Attorney Robert C. Delaney, a member of the firm of Zaccagnino, Linardos & Delaney, and requested permission of the court to change his plea to the information. (Tr. pp. 1, 2)

25. The court was requested by the State's Attorney to make inquiry of the defendant with respect to representation by counsel since there had been prior indication that counsel had asked to withdraw from the case. (Tr. p. 2)

26. Thereafter, the following occurred:

THE COURT: Well now, Mr. Dukes, I want to be sure that everything is in order here. I was present the other day, of course, when you were presented and the problem came up about an attorney. Now I want, now Mr. Delaney is here, are you fully satisfied with the services he is rendering you, Mr. Dukes?

THE ACCUSED: Yes, sir.

THE COURT: You are. And now you know, of course, Mr. Dukes, that — you know of course that the State of Connecticut has the burden of proving you guilty on the charge and you are free to go to trial but you still wish to change your plea, is that correct?

THE ACCUSED: Yes, sir.

THE COURT: And you know the probable consequences of it?

THE ACCUSED: Yes, sir.

THE COURT: Very well, and no one has induced you to

do this, influenced you one way or the other? You are doing this of your own free will?

THE ACCUSED: Yes.

THE COURT: Very well then. We will accept the change of plea.

ASSISTANT CLERK JOEL ELLIS: Mr. Dukes, how old are you?

THE ACCUSED: Thirty-two years old.

MR. ELLIS: Do you waive reading of the information?

MR. DELANEY: We will waive the reading.

MR. ELLIS: To the charge of violation of Uniform State Narcotic Drug Act what is your plea?

MR. DUKES: Guilty, sir.

MR. LABELLE: May we have the plea to the amendment also?

MR. ELLIS: Do you waive reading of the amended —

MR. DELANEY: Waive reading of the amended information.

MR. ELLIS: In the amended information you are charged in the second count with larceny. What is your plea to that count?

THE ACCUSED: Guilty, sir.

THE COURT: Both pleas are accepted.

MR. LABELLE: May these matters be referred to the probation department for pre-sentence report, your Honor.

THE COURT: June 2nd.

MR. LABELLE: And may they be assigned disposition?

THE COURT: They've got quite a few, I understand, for the 26th.

MR. LABELLE: May it be June 2nd.

THE COURT: June 2nd, and continued under the same bond.

MR. LABELLE: The bond in the case is twenty thousand dollars.

THE COURT: Very well. Pre-sentence investigation is ordered, sentencing for June 2nd on the same bond.

MR. DELANEY: Thank you, your Honor.

27. On June 2, 1967, the defendant appeared in court before the Hon. Raymond J. Devlin, and Attorney Zaccagnino appeared with the defendant on that day. (Tr. p. 1)

28. The following occurred:

MR. ZACCAGNINO: If your Honor pleases, this was set down in the other courtroom before Judge Johnson this morning, and Mr. Capshaw is still working on the report, and they tell me, I find through Dukes, they need another two weeks in which to finish it. Mr. LaBelle asked me to have the case called here because Judge Johnson is handling divorce matters.

I would also say that all the matters we have asked for consolidation haven't come in, so we'd need a continuance for that purpose anyway.

MR. SILVESTER: June 16th, if your Honor pleases, under the same bond?

THE COURT: June 16th. Same bond.

MR. ZACCAGNINO: Thank you, your Honor.

29. On June 16, 1967, the defendant was presented for sentence before Hon. Raymond J. Devlin. (Tr. p. 1)

30. At that time Attorney Zaccagnino appeared with the defendant. (Tr. p. 1)

31. The defendant indicated to the court that he had consulted other counsel. (Tr. p. 1)

32. Other counsel had been contacted the night before. (Tr. p. 3)

33. No other counsel had entered any appearance on behalf of the defendant. (Tr. p. 3)

34. The defendant did not tell his own counsel about consulting other counsel until the morning of June 16. (Tr. p. 2)

35. No other counsel filed any appearance on behalf of the defendant until June 22, 1967. (File)

36. The defendant requested permission to withdraw his plea of guilty which request the court denied. (Tr. p. 5)

37. The defendant had not told his counsel that he wished to change his plea until he made the request to the court. (Tr. p. 4)

38. No exception was taken to the denial. (Tr. June 16)

39. The defendant requested a continuance until the following Tuesday which the court denied. (Tr. p. 3)

40. No exception was taken to the denial. (Tr. June 16)

41. During the period between May 16 and June 16, the defendant had requested that charges against him from other counties be consolidated in Hartford County under General Statutes, § 54-17a. (Tr. p. 1; pp. 4, 6, 7; file)

42. No evidence was offered by the defendant in connection with any of his motions. (Tr. June 16)

43. The defendant did not offer any medical evidence to support his motion to change his plea and no medical evidence was attached to the probation report although the probation officer requested the defendant to furnish medical reports. (probation report)

44. The defendant did not make any motion in arrest of judgment before sentence was imposed or at any other time. (file)

45. The defendant did not make any motion to open the judgment or to vacate the sentence. (file)

46. The probation report is hereby made a court exhibit.

47. The probation report was delivered to counsel for the defendant and to the court prior to June 16. (probation report)

48. The probation report had been read by the court prior to June 16.

49. The defendant is experienced in criminal matters and is experienced in court appearances to answer to criminal charges. (probation report and criminal record; Tr. pp. 5, 6)

50. There were several other criminal charges pending against the defendant in Hartford County, New Haven County and Fairfield County at the time he was sentenced. (probation report and criminal record)

51. The defendant was involved in narcotic drug traffic in Hartford. (probation report)

52. The case was submitted to the court for sentencing on an agreed recommendation. (Tr. pp. 4, 5, 6; Tr. pp. 1, 2)

53. The defendant was sentenced to not less than 5 nor more than 10 years on the narcotics count and to two years on the larceny receiving count.

54. The defendant was free on a bond of \$20,000 during all the proceedings in this case. (probation report, file, Tr. p. 4)

55. Other than the defendant's request to change his plea again, no complaint was made to the court about what had previously occurred before Judge Johnson.

Second

The following conclusions have been reached:

56. The defendant before June 16 at the time the case was ready for trial had already changed his plea from not guilty to guilty.

57. The change of plea to guilty on May 16 was the free and understanding expression of his own wishes.

58. The defendant had from May 16 to obtain other counsel and to notify the court of his desire to change counsel.

59. The defendant had told the court on May 16 on specific inquiry that he was satisfied with his counsel.

60. The defendant appeared in court on June 2, and did not in any way indicate to the court that he desired to change counsel or that he desired to change his plea.

61. The defendant did not act in good faith with respect to seeking other counsel.

62. The defendant did not notify the court between May 16 and June 16 that he desired to change his plea.

63. His counsel was surprised on June 16, at the defendant's request to change his plea. (Tr. p. 14)

64. On June 2 the court was advised that the defendant was awaiting transfer of charges from other counties that he had requested be consolidated, and the defendant knew that under the statute allowing this, the defendant is required to plead guilty to all the charges from all the counties.

65. The court in its discretion may allow a change of plea when it is fair and just to do so.

66. No credible evidence was introduced by the defendant to support the granting of a change of plea.

67. The defendant at the time of sentencing requested to change his plea for the purpose of delaying sentencing.

68. It would not be fair and just under all the circumstances to allow the defendant again to change his plea, having in mind the seriousness of the offenses, the conduct of the defendant, and the protection of society.

69. At the time the plea of not guilty was changed to guilty the court before accepting the plea carefully ascertained that the plea of guilty was voluntarily made, without any mistake by the defendant, allowed an amendment to be filed with the defendant's consent, and determined that the defendant was fully aware of the possible consequences of his guilty pleas.

70. The sentence imposed was within the limits fixed by the statutes for the offenses charged.

Third

71. Defendant made no claims of law.

Fourth

72. The probation report is made a part of the finding and may be used in argument before the Supreme Court without being printed.

DEVLIN, J.
JOHNSON, J.

Filed February 27, 1968.

Assignments of Error

1. In finding the facts set forth in Paragraphs 4, 5, 13, 22, 23, 41, 49 and 50 of the Finding without evidence.

2. In finding the facts set forth in Paragraphs 33, 34, 35, 37, 38, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 53, 54, and 55 of the Finding because such facts are not material facts relevant to the issues raised by this appeal relating to the denial of the rights of the appellant under Articles Fifth, Sixth and Fourteenth, Amendments to the Constitution of the United States.

3. In finding the facts set forth in Paragraphs 43, 46 through 51 and 54 of the Finding because such facts are based upon a probation officers presentence investigation and are immaterial and irrelevant to the rulings of the Court made on May 9th, May 10th and June 16th, 1967 and because the function of such probation officer's presentence investigation report is to aid the Court in the imposition of a fair and just sentence after all legal rights of an accused have been exhausted or determined.

4. In refusing to find the material facts set forth in Paragraphs 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33 and 34 of the Finding which were admitted or undisputed.

5. In reaching the conclusions stated in Paragraphs 57, 58, 61 and 63 to 69 inclusive of the Finding.

6. In reaching the conclusion and stating that the defendant made no claims of law as stated in Paragraph 71 Part III of the Finding.

7. In refusing to find and make part of the record Paragraphs 44 to 47 inclusive, Part III of the Draft Finding relating to the rulings made by the Court which rulings are admitted or undisputed.

8. In refusing to find Paragraphs 48 through 53 inclusive, Part IV of the Draft Finding relating to the claims and motions made by the defendant which claims of law and rulings on motions were admitted or undisputed.

9. In finding that the probation report made be made a part of the Finding and may be used in argument before the Supreme Court as stated in Part IV, Paragraph 72 of the Finding because such probation report is irrelevant and immaterial to the question of whether the constitutional guarantees of the appellant under the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States had been violated prior to the imposition of sentence and because such improper use of the probation report is prejudicial to the rights of the appellant.

10. In rendering a judgment of guilty as on file.

11. In refusing to grant the motions of counsel of record for permission to withdraw.

12. In refusing to accept the request of counsel of record to withdraw as counsel for the accused in the light of the disclosure made by counsel of record to the Court that there existed a conflict between himself and the accused which difference may go to the heart of his representation of the accused.

13. In ordering the defendant to trial without proper representation for the accused.

14. In ordering the accused to stand trial under circumstances in which the accused was to conduct the trial of his own case.

15. In accepting the plea of guilty and in rendering a judgment of guilty after the accused had informed the Court that he was not guilty and after he had advised the Court of the circumstances under which he pleaded guilty.

16. In depriving the accused of his Constitutional Rights under the Fifth, Sixth and Fourteenth Amendments.

The Defendant

CHARLES O. DUKES

By: ALPHONSE C. FASANO

His Attorney

Filed March 7, 1968.

No Corrections.

3/14/68

DEVLIN, J.

Amendment to Assignment of Errors

The defendant Charles O. Dukes amends Paragraph 4 of the Assignment of Errors to insert the word "draft" before the word "finding" which word was inadvertently omitted at the

time the Assignment of Errors was filed, so that Paragraph 4 will read:

4. In refusing to find the material facts set forth in Paragraphs 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 21, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33 and 34 of the Draft Finding which were admitted or undisputed.

The Defendant
 CHARLES O. DUKES
 By: ALPHONSE C. FASANO
 His Attorney

Filed April 8, 1968.

SUPREME COURT
 HARTFORD COUNTY

} CLERK'S OFFICE

The above and foregoing is a true copy of the record in said case to be used in the trial in the Supreme Court.

Attest:

DOMINIC A. DiCORLETO
 Clerk

TRANSCRIPT OF TESTIMONY, HABEAS CORPUS

STATE OF CONNECTICUT

No. 161335

CHARLES DUKES
V.
WARDENSUPERIOR COURT
HARTFORD COUNTY
NOVEMBER 5, 1969

BEFORE: HONORABLE IRVING LEVINE, JUDGE

APPEARANCES:

JAMES A. WADE, ESQ.

Attorney For The Plaintiff

JOHN D. LABELLE, ESQ.

State's Attorney, For The Defendant

PETER J. ZACCAGNINO, JR., called as a witness, having been duly sworn, was examined and testified as follows:

CLERK OF THE COURT: Would you please state your full name and address?

THE WITNESS: Peter J. Zaccagnino, Jr., 374 Campfield Avenue, Hartford, Connecticut.

DIRECT EXAMINATION BY MR. WADE:

Q. Your occupation, Mr. Zaccagnino? A. I'm an attorney, practicing in Hartford.

Q. And how long have you been an attorney, sir?

A. I think it's nineteen years — eighteen years, I believe. Wait a minute, it's 1952, seventeen years.

Q. Would you tell us who the members of your law firm are? A. Yes. I have two partners, Robert Delaney, George Linardos, and I have Robert Blechman (phonetic) as an associate in our office. We have four lawyer.

Q. Would you describe generally the type of practice that your law firm engages in? A. Well, Mr. Delaney and myself devote ourselves to the criminal business. The others are on the civil side. We devote ourselves almost entirely to the criminal business.

Q. Do you know the petitioner, Charles Dukes?

A. I know Charles Dukes very well.

Q. And was Charles Dukes a client of yours in May of 1967? A. Yes, he was.

Q. Would you tell us how he came to you as a client, initially? A. Well, the first time he came to me, I think I was trying a case in the Hartford Circuit Court, which I won, and he saw me trying the case, and he said he wanted me to represent him on a matter. I think that's the first time I bumped into Charlie, where he asked me about this particular case.

Q. And did you have discussions with Mr. Dukes about this particular case? A. Yes, I did.

Q. In your office? A. In my office, in the Courtroom when he saw me, and I suppose in the Superior Court, too, beforehand. I remember talking to him on occasion. I don't remember just where.

Q. Now, at that point in time, was Mr. Dukes out on bond? A. Yes, he was out on bond.

Q. Now, did he indicate to you, prior to May 9, 1967, did he indicate to you which way he wanted to plead on

the charges then pending against him? A. Well, he wanted to plead not guilty, and it was my feeling, from my judgment of the case, that I was trying to persuade him to plead guilty to wipe up some matters that were pending, and I told him that I thought he ought to enter a guilty plea, and his conversation with me was that he wanted to plead not guilty, and I told him in his best interests, he should enter a guilty plea, because I remembered Mr. LaBelle reminded me, I looked at the file of something, I remembered reading the file, but there were other warrants outstanding and other matters pressing, which bring it in focus that for his best interests, I was trying to convince him to take a guilty plea.

Q. And these suggestions that he take a guilty plea, were they over a period of some time? A. Well, I had — in my opinion, in his best interests, I applied a little pressure on him to take a guilty plea, because I thought it was in his best interest, because he had a number of warrants pending against him.

Q. Now, leading up to the date of May 9th, do you recall appearing in Superior Court before Judge Johnson with Mr. Dukes? A. Yes, at that time, because of the fact that I felt that he should take a guilty plea, and he felt he should take a not guilty plea, I thought there was, you know, a conflict between our positions, and I told Charlie, I said Charlie, I think you better get another lawyer, because I don't think I can represent you, you feeling one way and I feeling another way, because my experience in this field tells me that you should enter a plea, and that's when we came to pass, in the first time.

Q. All right. Now, this May 9th appearance in Superior Court, was this the first appearance in Superior Court in connection with this case, on behalf of Dukes?

A. I don't know, but I know it was — it might have

been the first time for me, because I discussed the case with the State's Attorney a number of times prior to that, but as a matter of fact we had a number of conversations, but it may be my first Court appearance. I suspect it was. I don't have any definite recollection.

Q. The record indicates that he was put to plea on the 9th of May. A. Well, I assume that that's correct, and I'd say that that's the first time it was brought into Court. I'm certain it probably was.

Q. Now, after the dialogue that took place in Court on the 9th of May, when was the next time you saw Mr. Dukes? A. Well, it was a couple of weeks later, because in between that time, I had seen Charlie perhaps back and forth around the Courtroom. I don't know if I did. I don't have a definite recollection at this time that I saw him. But I know I was at the sentencing when it came up for sentencing.

Q. All right. Did you talk to Mr. Dukes yourself between the 9th of May and the 16th of May, and to refresh your recollection, the 16th of May, the record indicates as the date that he plead guilty. A. Did I talk to him between that time?

Q. Yes. A. I don't know. I'm sure I might have, because it was during that period that I was trying to persuade him to take a guilty plea, and I don't know if I did or not. I know that Mr. Delaney did talk with him.

Q. All right. Now, I'm going to come to that next. The record indicates that on May 16th, Mr. Delaney appeared in Superior Court with Mr. Dukes, and at that time he entered a plea of guilty. Now, the question that I have for you is did you and Mr. Delaney discuss the disposition, or what action should be taken on behalf of your client, Mr.

Dukes? A. Oh, I'm sure we had a number of discussions, and in refreshing my recollection this morning, we were coming up, we happened to be talking about — we didn't know what was going to be discussed, but I know that I had a number of discussions with Mr. Delaney, and both of us said, try to convince him that it was in his best interest to take a guilty plea, and I think that Mr. Delaney and I had some conversation about it, and I might have been on trial — it's my best recollection I was on trial, and that's why Bob Delaney handled the case the actual time that he changed his plea, rather than myself.

Q. As far as you are concerned, was Mr. Dukes still a client of your law firm? A. Well, he had paid me, let me put it that way, and I assumed that he was still a client of ours. I would say yes, he was a client of ours, because I had no understanding that he wasn't. I had made the formal offer to withdraw, and I would state in the case, as I recall, Mr. Fazzano, or somebody that he had mentioned in New Haven, that he was going to bring up as his counsel, was going to come in.

Q. Now, I take it you had entered an appearance slip?

A. Oh, we had an appearance in the file, yes.

Q. And in whose name was that appearance?

A. I would be the firm appearance, normally. I can't recall, but I know that I always enter firm appearances, because both Mr. Delaney and myself get involved in all the cases that we are involved in over there.

Q. Now, you say that during this period from the 9th of May to the 16th of May, you had conversations with Dukes in which you attempted to induce him to change his plea from not guilty to guilty, is that right? A. That's correct. That was still my best opinion at that time.

Q. And did there come a time when he finally agreed to do so? A. I was not present when he finally agreed to do so. I only can tell you that Mr. Delaney told me. He's here. I suppose you should ask him.

Q. And then there came a subsequent time when you appeared on behalf of Mr. Dukes for purposes of sentencing, in that right? A. Right.

Q. And the record indicates that you advised the Court that Mr. Dukes had told you that he now had another attorney from New Haven, is that right? A. He told me that — no, he told me in the morning — the sequence was a little different. I think it went something like he told me that he did not — he wanted to change his plea, because he felt that when he entered a plea, he was under some medication or some problem that he had, and he didn't realize what he was doing, and that he was going to get another lawyer. Well, I said I cannot make a representation to the Court at this late date to change your plea, and I said I'll inform the Court of it, but if you do have another lawyer, you better bring him up here, because at the last moment, to find this out, I said, you know, you'll have to advise the Court of this fact, which I tried to do on the record, as I recall.

Q. Now, ancillary to this, were you also representing two girls, by the name of Baker and Sejerma? A. I don't have a definite recollection as to the date, but I understand by looking at the record, I was representing them at the time, but if you're asking, I don't have a recollection — I know I represented both of them, and whatever the record appears on these girls, I did represent them both, and was present at their sentencing. The answer to that would be yes.

Q. And was the representation of the two girls, did they come into your office at about the same time Dukes

did? A. They came to my office after Dukes came in. It was really not about the same — they were in there some time around the same time, because they were sentenced about the same time.

Q. Now, were the girls involved in offenses which involved Dukes also? A. Yes, they were

Q. And would you tell his Honor what the plea of the two girls was? A. They plead guilty.

Q. Now, did the question of your representation of the girls arise between you and Dukes? A. No. He knew that I was representing them. There was no problem about that.

MR. WADE: At this time, your Honor, I'd like to offer as Petitioner's Exhibits One, Two and Three, the transcripts of the proceedings before Judge Devlin, on April 18th, involving *State v. Andrea Sejerma*n, docket number 28080, and *State v. Sandra Baker*, docket number 28081.

MR. LABELLE: I have no objection.

THE COURT: What would be the purpose of offering the transcripts of what happened at their sentencing?

MR. WADE: I think, your Honor, this: Mr. Zaccagnino has testified that he advised the Court of a conflict between his client and himself; that he, on behalf of his client, in good faith, attempted to withdraw from the case, and that the trial Judge at that point in time said I'll not let Mr. Zaccagnino out of the case, but I'll give this man twenty-four hours to come up with another attorney.

THE COURT: Well, this is what Attorney Zaccagnino testified. He hasn't testified that he had a conflict of interest between the Sejerma and the other. He testified that there

wasn't any. — he testified that he explained it to him and there wasn't any objection.

MR. WADE: Yes, but I'm raising it, your Honor, and I have raised it in my amended petition, that there was a basic conflict, and that from a legal point of view, this affects the voluntariness of Mr. Dukes/plea, and so what I propose to offer is the proceedings before the Superior Court when the girls plead guilty, and then the proceedings before the Superior Court when they were sentenced.

THE COURT: There is a third exhibit you wish to have made an exhibit?

MR. WADE: Yes, your Honor.

THE COURT: Which would be the sentencing by Judge Devlin of this defendant, am I correct?

MR. WADE: No, that's in the record already, your Honor, on the return of the State's Attorney.

MR. LABELLE: Apparently what he wants to offer is the sentencing of the two girls. I have no objection.

THE COURT: Well, I do.

MR. LABELLE: I understand that, your Honor, and I fail to see the connection here at the moment, but if he wants to lay his foundation, it's all right with me.

THE COURT: All right. They may be entered as Petitioner's Exhibits one and two.

MR. WADE: One, two and three, your Honor. The girls are two separate —

THE COURT: You still haven't explained to me what the third one is.

MR. WADE: The first two, Andrea Sejerma, and then Sandra Baker. Then the third one is the sentencing, which is joined in both cases.

MR. LABELLE: May we have the dates?

MR. WADE: Dates of number one and two would be April 18, 1967, and three would be June 2, 1967.

THE COURT: All right. They may be marked. (The documents referred to were received in evidence and marked Petitioner's Exhibits One, Two, and Three, respectively.)

MR. LABELLE: Is number one Sejerma?

THE COURT: That's right.

THE CLERK: Number two is Baker.

THE COURT: And the sentencing is number three. Is there some particular portion of this you wanted me to refer to?

MR. WADE: Yes, your Honor.

THE COURT: Or may I read then at my convenience?

MR. WADE: Yes, your Honor, but I would refer specifically on the transcript of sentencing remarks to page six, through the top paragraph on page seven, and page nine, the first full paragraph.

THE COURT: All right. They have been noted by the Court.

BY MR. WADE:

Q. Mr. Zaccagnino, at the time of sentencing, the transcript indicates, and I don't want to take this out of con-

text, and I want to give you the opportunity to put it in the proper context, the transcript indicates that you said to the Court, after Mr. Dukes had indicated he wanted to withdraw his guilty plea, "This is the first I heard of it, your Honor, but I had a suspicion that this may take place, because of the problem when he entered the plea, I was maybe a little forceful." Could you tell his Honor the background in connection with that?

THE COURT: This appears on what page of the transcript?

MR. LABELLE: It's on the June 16th sentencing remarks, under the return, your Honor.

MR. WADE: And that would be the bottom of page four and the top of page five, of the June 16th sentencing remarks.

THE COURT: That has to do with a motion to suppress. Is that the one you're talking about?

MR. WADE: June 16th, your Honor.

THE COURT: I just took the first page four I came to.

MR. WADE: Toward the very back of the return, your Honor.

THE COURT: I have it now.

THE WITNESS: May I have the question read to me, your Honor? I just forgot it.

THE COURT: You may. (The pending question was read back by the Court Reporter.)

THE WITNESS: Well, to go back, if your Honor please, to the background, there were five or six warrants pending

against Dukes, and Dukes maintained that in this particular case he was innocent, and he said he wanted a trial on the matter. I reviewed the files, and after looking at them, it was my independent judgment that I couldn't win this case or any of these cases after I had reviewed the evidence, and I told Dukes this, and I told Dukes it was in his best interest to wipe them all off, and get concurrent sentences, which were going to be recommended by the State's Attorney, and as a practical matter, I probably was a little forceful because my judgment was swaying me, that I was correct, that he was not correct, in his opinion that he should plead not guilty. He claimed consistently to me that he didn't make any sale of narcotics, and so I told him what I thought about the case, after reviewing the evidence. So from the beginning, Dukes wanted a trial, and I probably thought I might have been too forceful, but it sometimes happens that your judgment, you're trying to impose upon a client, knowing that it's in his best interest, at least in your opinion it is, and I told Charlie it would be winning the battle and clearing the way, because there was no way, with these five felony warrants pending against him, that I was able to win them all, because I said no matter what you think about this case, it's my opinion that it's your best interest to plead guilty, and at no time did I have a conversation whether he was guilty or not. Mr. Delaney handled that at the time of the change of plea, but I know when I talked to him, he maintained he was innocent. At some later date he changed his plea, so I assume there was some conversation about that, and I don't know what took place in the meantime, but basically, there was the reason that I made that statement to the Court, because he was insistent that he wanted to try the case, and I kept trying to get the matter put down, because I didn't think it was in his best interest to try it.

BY MR. WADE:

Q. In other words, looking at it from a defense point of view, you felt it was in his best interest to plead guilty and get everything wrapped up all at one point?

A. That's correct.

MR. WADE: I think that's all.

CROSS EXAMINATION BY MR. LABELLE:

Q. Mr. Zaccagnino, with respect to the girls, Sejerma and Baker, you didn't represent Dukes in that case, did you?

A. No, I didn't represent Dukes in that case, but Mr. Barlow did.

Q. And so far as Sejerma and Baker are concerned, Dukes was a defendant with them in that same set of circumstances? A. That's correct.

Q. And he had counsel, other than you, for that case, did he not? A. I believe it was Boce Barlow, if my memory serves me right.

Q. And you did not represent him in that case?

A. No, I did not.

Q. You represented the two girls? A. Represented the two girls.

Q. And when you referred, in the sentencing remarks, to Mr. Dukes, you were referring, I take it, to that particular case, you said that he had taken a plea. Do you recall that?

A. Well, I don't remember what I was referring to, Mr. LaBelle, there were so many cases that were at that time pending, and I don't remember what I was referring to, but I know he had taken a plea —

Q. I show you Exhibit Three, and ask you if you can refresh your recollection with respect to the remarks you made on page six and the top of page seven.

A. I don't remember him ever taking a plea in that case.

Q. But you were referring to his pleading in that case that involved the girls, were you not? A. It appears as if that's the way I said it. I really don't know. As a matter of fact, the first time I knew that he took a plea to that case, my memory is now, looking at this file — I don't have a memory of him taking a plea. I assume that's what I was referring to, but I don't have a definite recollection.

Q. Well, isn't it a fact that the girls were only involved in this one case? A. They were only involved in this one case, right.

Q. With respect to the case for which he's sentenced to the prison now? A. They were not involved.

Q. Which involved the narcotics charge, and the larceny charge, for which he's now sentenced, the girls had nothing to do with that case? A. No, they were not involved in that case.

Q. Not whatsoever? A. No.

Q. So that your remarks on Exhibit Three, with respect to the girls talking about Dukes, only had to do with the particular charge that the girls were involved in?

A. I would assume so, from looking at the record. I don't have a definite recollection. That would be my assumption, based on what I said there.

Q. In other words, if the girls were talking to the police about Dukes, they were talking about the case they were in, isn't that so? A. I think that there was — yes, I think so. They also questioned them on something else to

do with Dukes, and I don't remember — it had nothing to do with this other case, though, I'm certain of that.

Q. Nothing to do with the case he was sentenced on?

A. There was something pending with Dukes that they wanted him to testify on, but I don't remember what that was about, but nothing to do with the narcotics case.

Q. Now, let's go back to the case for which he has brought this habeas corpus. Mr. Delaney represented him on May 16th when he entered his plea? A. That's correct.

Q. You were not there? A. I was not.

Q. And then the matter was set down for presentence report for June 2nd. Do you recall that? A. The actual date, no, but if it's in the record, I assume that's the correct date.

Q. Do you recall whether or not you took up with me the possibility of consolidating certain charges that were pending against him in other counties? A. Oh, yes, I took that up with you. That was prior to the time of plea I discussed all of that with you.

Q. So that the case, if it was set down for sentencing on June 2nd, do you recall appearing in Court on June 2nd with respect to postponement of the day of sentencing?

A. Let me see that record, and if I can refresh my recollection — probably — the dates, I don't have definite recollections of the dates.

MR. LABELLE: I'll borrow yours, if I may.

MR. WADE: Go ahead.

MR. LABELLE: This is on the return, your Honor, the transcript of June 2nd.

THE WITNESS: Yes, your Honor, I have read this,

and it does refresh my recollection, and I was in Court on June 2, 1967, and we had it continued to June 16th.

Q. Now, at that time, Mr. Dukes was present with you, was he not? A. I can't give you an answer to that, Mr. LaBelle. I don't have a recollection. I would assume that he was, because all the times that these matters come up, they made me appear with client in hand, but I don't have a definite recollection.

Q. Let me just ask you this; isn't it so that with respect to Dukes, that I insisted that he appear in Court for every continuance? A. Yes, that is correct, and I don't have any definite recollection of him being there that day, but I would assume he was there.

Q. Now, from May 9th, when you first appeared in Court, when you were with him, was he on bond in this case?

A. Yes, I believe he was.

Q. For which he's sentenced? A. Yes, he was on bond.

Q. And he was on bond May 16th when he appeared with Mr. Delaney? A. Oh, yes.

Q. And he was still on bond pending the presentence report, which was originally scheduled for June 2nd?

A. That's correct.

Q. And when you got the continuance on June 2nd, he was still on bond? A. That's correct.

Q. Now, as of June 2nd, weren't you still intending to have the cases consolidated from the other counties for purposes of disposition? A. Yes, I was. I see in the record that I made some statement about having the matters consolidated.

Q. And one of the reason it had to be continued was because they hadn't got there, isn't that so?

A. That's correct.

Q. Now, at that point, on June 2nd, had Mr. Dukes at any time ever said anything to you about getting another lawyer? A. Not to my knowledge, but I would say this, that during that period, I really don't have any definite recollection of whether he spoke to me about it — I would assume not, because I had asked for the matter to be continued for consolidation. I would have to assume that he did not.

Q. And on June 2nd, did he ever say anything to you about wanting to change his plea of guilty? A. I don't think he did on that date, but —

Q. Well, it's obvious he didn't when you wanted to consolidate the cases, isn't it? A. I don't think he did, no. I can't remember when he actually spoke to me the first time about it.

Q. But isn't it so that you knew in order to consolidate cases that there had to be a guilty plea in all cases?

A. Well, I'm fully aware of that and I was aware of it at the time.

Q. Now, let's go to June 16th, the day of sentencing. Up to that point, had he ever told you that he wanted another lawyer? A. Something in my memory says that maybe the day before, that we had a conversation somewhere in the Court, and I got the feeling that he wasn't happy with the plea of guilty that had been entered, but it might have been the same day —

Q. I'd ask you to refresh your recollection by examining the June 16th transcript. A. Yes, I think that's probably the first time that — as I say, if it was, it was within twenty-four hours of this time. It was a short period of

time prior to this time that I was advised. I don't see in here when I said I was advised. Mr. Dukes advised me there's other counsel. I would say it was either that day or the day before he met me in Court, that I got the message from Mr. Dukes that he was bringing in other counsel.

Q. That's the first time you knew about any other counsel? A. Except that originally when he wanted to bring in other counsel, and when I tried to get out of the case originally, he told me he wanted to get other counsel from outside the county, because he didn't figure that any lawyer within the county could do him as good as a lawyer outside of the county.

Q. That was back on May 9th? A. I said feel free to bring in whoever you want. I said if you want me out, I'll get out. At that time he told me he was going to bring another lawyer in, but I didn't hear about it again until the 16th.

Q. Now, I'm refreshing my recollection on the transcript of June 16th. Will you look at that, on page four?

A. Well, from my remarks there, I would say that I had found out about it that day.

Q. Now, that's with respect to change of plea, on page four. A. Yes. What's your question, Mr. LaBelle?

Q. When was the first time he ever told you that he wanted to withdraw his plea of guilty? A. Well, the morning that we went into Court he told me that, and I advised the Court of that, the morning of this statement.

Q. June 16th? A. Yes, whatever day it is, June 16th.

Q. So that from May 16th, when he put in his plea of guilty, until June 16th, when he told you in Court, at the time of the sentencing, did he ever tell you he wanted to

withdraw his guilty plea? A. Not to my knowledge. I would say no, by looking at that transcript. I don't have a definite recollection, but the transcript suggests to me that when I made a statement in Court that he told me that morning, that that was the best recollection that I had then, would be the situation that occurred.

Q. As a matter of fact, you were totally taken by surprise on that, weren't you? A. Well, I see from the record that I was, yes. As I say, I don't have a definite recollection, but looking at my words here, I would say that I was taken by surprise. The answer would be yes.

Q. And isn't it a fact that during the month from May 16th to June 16th, he was on bond at all times? A. He was.

Q. And you communicated with him during that period? A. Yes, I saw him on occasions.

Q. And you also saw him in Court on June 2nd? A. Right.

Q. And yet on June 16th, that was the first time that you had any inkling that he wanted to withdraw his plea of guilty? A. The word, "Inkling," I would say no, but it's the first time he told me directly that he wanted to withdraw his plea. I had the suspicion that he was going to change his plea, but he never told me directly he was, until that morning.

MR. LABELLE: I believe that's all I have, your Honor.

REDIRECT EXAMINATION BY MR. WADE:

Q. One thing I want to get straight. The Baker and Sejerma girls, they were clients in your office from some time prior to April 18th, when the piead quilty, until June 2nd, when they were sentenced, right? A. You didn't put

anything on the subpoena — I don't know the date — the only way I can tell the day that they come in my office is by looking at a file. I know they had to be in my office — they had to be clients for more than six weeks, because a presentence takes at least four, and they spoke to me before that, so I would say at least six weeks they were clients of mine, where I had appearances filed for them.

Q. And during a portion of that period at least, at least from May 9th, Dukes was also a client of yours, is that right?

A. That's correct.

Q. And you had engaged in conversations with the girls about the handling of their cases, right? A. Oh, there's no question about that, yes.

Q. And you had engaged in conversations with Dukes about the handling of his case? A. Right.

Q. And you were aware of the involvement of the girls with Dukes on the matter they were being charged with?

A. Oh, yes, I was aware of that.

Q. Now, Mr. LaBelle has called your attention to the June 2nd appearance date, when you appeared on behalf of Dukes. A. Yes.

Q. The record seems to indicate to me, at least, that there was a probation report that was not prepared, is that true? A. Oh, that's right. The reason for the continuance, original reason for the continuance was really twofold; one that the probation — they told me the probation report wasn't ready. Terry Capshaw had called my office a day or two before, and said, "Pete, we are not ready," and he said, "We are going to have to ask for a continuance," and I said fine, and I added also that the other cases were coming in.

Q. Now, in other words, the delay on June 2nd was

partially the State's responsibility and partially that the defense wanted additional time on the negotiation of other cases?

A. Well, I would say primarily it was the State's, because if they were going to proceed, they would have proceeded that day, I'm sure, irrespective of other matters.

Q. And on the question about Mr. Dukes being out on bond from May 16th to June 16th, do you have any independent knowledge of your own as to whether or not he was in fact out on bond all that time? A. No, but I do know this, that there was a period of time I didn't see him, but I do know that prior to the time of June 2nd he was out on bond. Now, if he got arrested in the inbetween period, I don't know anything about it. I know he was arrested in the Courtroom for something, and may not have been out on bond for a period of time.

MR. LABELLE: That's all I have.

THE COURT: Thank you, Mr. Zaccagnino.

MR. WADE: Mr. Delaney, will you please take the stand?

ROBERT C. DELANEY, called as a witness, having been duly sworn, was examined and testified as follows:

CLERK OF THE COURT: Would you please state your full name and address?

THE WITNESS: Robert C. Delaney, 4 Regency Drive, Bloomfield.

DIRECT EXAMINATION BY MR. WADE:

Q. Now, your occupation, Mr. Delaney? A. I'm an attorney.

Q. And how long have you been an attorney? A. Eight years.

Q. And where do you practice? A. In Hartford.

Q. And are you a member of a law firm? A. Yes.

Q. Whose firm? A. Zaccagnino, Linardos and Delaney.

Q. And you are a partner in that law firm? A. Yes.

Q. And you are a partner of Mr. Zaccagnino's? A. Yes.

Q. Do you know the petitioner, Charles Dukes? A. Yes, I do.

Q. The record indicates that on May 16, 1967, you appeared with Mr. Dukes in the Superior Court in Hartford before Judge Johnson, at which time he entered a plea of guilty to the charges pending against him. Do you recall that date?

A. I recall the day, yes.

Q. And do you recall being there with Mr. Dukes?

A. Yes.

Q. Preparatory to that Court appearance, when was the first time you talked to Mr. Dukes? A. I believe I had talked to him several times about this case. I had been in Court when the matter was in Circuit Court. I had talked with Mr. Dukes about it, and I talked with Mr. Zaccagnino about it.

Q. In other words, this was being handled as an office matter? A. That's correct.

Q. And did the question of whether or not he should plead not guilty come up? A. Well, I don't know if I had discussed it with Mr. Dukes prior to that date, but I had discussed it in the office.

Q. With Mr. Zaccagnino? A. Yes.

Q. To the best of your recollection, can you tell us what transpired the morning of May 16th, prior to the entry of the guilty plea with regard to your conversations between Dukes and yourself? A. Well, this is only based on my recollection.

Q. I understand. A. I recall that we were called over there, that Mr. Zaccagnino was not available — I don't remember the exact reason — that there was pressure on myself as attorney and on Mr. Dukes, to either go forward or enter a plea, because the State was prepared to go forward, that I remember Mr. Dukes and I had rather lengthy conversations —

Q. Where was that conversation? A. I believe they were out in the hallway, at various places in the hallways, that I can recall taking him aside and talking to him about the problems. I think the basic position that I took with him was that he had many cases pending, some in other jurisdictions, some in the jurisdiction of the Superior Court in Hartford, that it was my feeling that if he did not enter this plea and dispose of all these matters, that if he tried this case, then they would just go on, and I think I had indications that they would just trying one case right after another, and eventually he was going to be convicted, and perhaps expose himself to further punishment than was going to be the recommended prison term.

Q. So your advice was a tactical one as counsel?

A. That's correct.

Q. What time period was involved that morning, in these discussions? A. I believe it took most all of the morning, and it might even have gone into the afternoon. I'm not sure of the time, but I know that we had lengthy conversations, and I know I had conversations —

THE COURT: This is your discussions with the defendant?

THE WITNESS: With the defendant, and with the State's attorney, and on that particular day.

Q. At the outset of these discussions, did Dukes maintain that he wanted to plead not guilty? A. Oh, yes. Well, he had already pled not guilty I believe at that time.

Q. I mean that he wanted to proceed on the merits of the case? A. Yes.

Q. And it wasn't until after these discussions with you that ultimately the guilty plea was entered? A. That's correct.

Q. Would you tell us how Mr. Dukes appeared to you that day, and I might lay a foundation for that by saying we have an hour petition for habeas corpus a claim has been made that at the time of the entry of his plea, Mr. Dukes was under the influence of physical and mental disturbances. Now, all I'm asking —

THE COURT: What is the reason for the explanation, Mr. Wade? Why can't we have uncluttered testimony without any explanation of what you're driving at?

MR. WADE: All right, your Honor. I'm sorry.

THE COURT: I don't think it's necessary to put in his mind what you are driving at. Let me determine what his testimony shows.

BY MR. WADE:

Q. Could you tell us how he physically appeared to you that day? A. Well, other than being agitated, he did not —

let me say this. I had seen him before, in our office, and in Court, in the Circuit Court and other Courts, and he did not appear to be in the same condition of mental alertness or physical well-being, on this particular day in Court, as he had on previous occasions.

Q. All right. Could you elaborate on that for his Honor?

A. Well, having not only represented him in cases, but seen him in other Courts on other occasions, I had had many conversation with him when he appeared to be—well, I would say he was a very good humored person, happy-go-lucky, and we would make jokes or kid around, and this particular day he did not seem as alert, and also, of course, as I say, we were under pressure and he was under pressure at the time, and I don't know what the cause of it was, whether it was a fact that we were discussing a very serious matter, or that it was anything physical, I would be unable to say.

Q. In this matter about being under pressure to go forward, when had your office learned, prior to the 16th, to be available and in Court ready for trial? A. I can't answer that question. I don't remember.

THE COURT: I think we can take judicial notice of the fact, Mr. Wade, that a date is set when a plea of not guilty is entered, which would have been the original date he was presented in Court. They were on notice, they had a not guilty plea, they probably elected a jury trial. The record would show that, so that they had all that time to get prepared.

MR. WADE: Yes, your Honor.

THE COURT: Whatever it was, whatever the period was.

MR. WADE: Yes, your Honor. I think that's all the questions I have.

CROSS EXAMINATION BY MR. LABELLE:

Q. Mr. Delaney, was there any question in your mind that Dukes knew what he was doing when he entered his plea on May 16th? A. No, not that he knew what he was doing.

Q. And is there any question in your mind but what his plea was voluntarily entered at that time by him?

MR. WADE: Well, just a minute. I'll object to that last question, your Honor, on the grounds that that calls for a legal decision, and it goes to the crux of our claim here. The question of voluntariness is a matter of law, I believe, that the Court must examine both the factual basis and the law as submitted by petitioner, and the Court must decide whether or not the plea was voluntary, and therefore it goes beyond the competency of Mr. Delaney to testify as to whether or not he believes it was voluntary.

THE COURT: I believe they can offer his testimony and his opinion as to whether it was voluntary or not. He participated in the entire action, and he would be subject to testifying whether he gave it on the basis of a promise, or whether he gave it by reason of duress. He previously stated it was given under pressure, so that I think this is proper cross examination. The objection is overruled for the record. You may answer the question, Mr. Delaney.

MR. WADE: Exception may be noted.

THE COURT: Exception noted.

THE WITNESS May I have the question read back, please?

(The pending question was read back by the Court Reporter.)

THE WITNESS: No.

BY MR. LABELLE:

Q. And isn't it a fact that the matter for trial was one count of the information of a narcotics charge? A. Yes.

Q. And wasn't there some discussion between you and me about the fact that for purposes of going to the jury, we were going to try the narcotics case? A. That's right.

Q. And that it was our understanding that we had this other case of the larceny count, that had been taken out of the original information, so that it would not prejudice the case before the jury? A. I don't recall that exact conversation.

Q. But you do recall the fact that we had to file an amendment by adding back a second count? A. Yes.

Q. And he was to plead to the narcotics count and the larceny count, is that correct? A. Yes.

Q. Now, with respect to his physical condition, was there anything that you knew about his physical condition that in any way impaired his ability to act on his plea and to change his plea as he did? A. Well, there was nothing that I knew, because if there was, I would have reported that to the Court, and I think we could have had a continuance without any problem.

Q. Yes, you would have reported it, would you not?
A. Yes.

Q. Now, isn't it also a fact that the Court made specific inquiry of Mr. Dukes, at the time of this change of plea, as to whether or not he was satisfied with you as his attorney in place of Mr. Zaccagnino? A. Yes.

Q. And he also asked him certain questions which the record shows, with respect to his plea, isn't that so?

A. That's correct.

Q. And you were present of course in all that time?

A. Yes.

Q. Now, did you have anything to do with Dukes, in this particular case, after May 16th? A. I may have had conversations with him, but I don't recall.

Q. But if you did have any conversations with him at any time did he ever tell you that he wasn't satisfied with your services? A. No.

Q. Did he at any time ever tell you that he wanted to get another lawyer? A. No.

Q. Did you ever have any knowledge that he wanted to change that guilty plea back to a not guilty plea? A. My recollection was that when Mr. Zaccagnino came back from Court that day, and informed me that we were both — this was the first time I had heard of his indication of changing his guilty plea.

Q. That's on the day he was sentenced? A. Yes.

Q. So that from May 16th to June 16th, when he was sentenced, you certainly had no knowledge that he wanted another lawyer? A. No.

Q. Or you had no knowledge that he ever wanted to withdraw that guilty plea which he entered with you?

A. Not to the best of my recollection.

MR. LABELLE: I believe that covers it, your Honor.

THE COURT: Any redirect?

MR. WADE: No, your Honor. That's all.

THE COURT: You may step down.

MR. WADE: Call the petitioner. I might point out for the benefit of Mr. Delaney and Mr. Zaccagnino that if they want to leave, I don't propose to use them any more.

THE COURT: Would there be any reason to keep them, Mr. LaBelle?

MR. LABELLE: I have no reason.

THE COURT: All right. Mr. Delaney and Mr. Zaccagnino are excused.

CHARLES DUKES, called as a witness, having been duly sworn, was examined and testified as follows:

CLERK OF THE COURT: Would you please state your full name and address?

THE WITNESS: Charles Dukes, Box 100, Somers, Connecticut.

THE COURT: You have explained to him counsel, his right not to testify?

MR. WADE: Yes, your Honor. We have talked about that. If your Honor would care to explore on the record, and explain to him again his rights in this connection, I think it might be appropriate.

THE COURT: Mr. Dukes, you understand of course that you have a Constitutional right to remain silent, I mean not to testify?

THE WITNESS: Yes, sir.

THE COURT: And you are the only one that can exercise that right. On the other hand, you may if you choose, testify.

THE WITNESS: Yes, sir.

THE COURT: Do you so choose to testify and to waive your right to remain silent?

THE WITNESS: I wish to testify, sir.

THE COURT: And you waive your right to remain silent? I'll ask the question again.

THE WITNESS: Yes, sir.

THE COURT: All right. You may proceed.

DIRECT EXAMINATION BY MR. WADE:

Q. Mr. Dukes, you are the petitioner in this matter, are you not? A. Yes, sir.

Q. Did there come a time in the Spring of 1967 when you retained Attorney Peter Zaccagnino as your counsel to represent you in connection with certain criminal charges pending against you? A. Yes, sir.

Q. Can you tell his Honor to the best of your recollection when you went to see Mr. Zaccagnino? A. Well, at first, Attorney Boce Barlow had the case, and during the course of this time, he's State Senator, and he had business in the legislature, which was in session at this time —

THE COURT: What month was this?

THE WITNESS: I don't recall.

THE COURT: As well as you can recall, as close as you can recall, would it have been April or May, or June?

THE WITNESS: I imagine it was in the vicinity of April.

THE COURT: Well, what I'm talking about now is what date is the arrest?

MR. WADE: I don't know, your Honor, the date of the arrest. Maybe Mr. LaBelle does. Maybe we can get at it this way.

Q. Referring to May 9th, the day you first went into Court, Superior Court, for a plea, how many weeks previous to that would you estimate that you spoke to Mr. Zaccagnino?

A. I spoke to him on several occasions. I think the arrest was on March 14, 1967.

MR. LABELLE: That's correct, your Honor.

A. And during the course of this time, Mr. Barlow says he was tied up, and he wouldn't be able to carry on, and advised me that he would turn all the cases over to Mr. Zaccagnino.

Q. All right. Let's explore that for a moment. Now, you say all the cases. You mean Mr. Barlow was representing you on several charges? A. Yes, sir.

Q. Charges in addition to the one that you are presently here at the prison for? A. Yes, sir.

Q. Now, referring now to this present charge that you are presently here on, what indication did you give to Mr. Zaccagnino as to how you wanted to plead to that charge when you first spoke to him? A. I told him I wanted to plead not guilty, because I wasn't guilty of the charge.

Q. And you told him that on how many occasions?

A. On a variety of occasions. I must have told him maybe twenty-five times or more.

Q. Now, bringing you up to May 9, 1967, the record indicates that Mr. Zaccagnino told the Court that he wanted to withdraw from the case, because you were not satisfied with him representing you. When was the first time you told Mr. Zaccagnino that you wanted another attorney besides him to handle the matter? A. This was on May 9th, before Judge Johnson?

Q. Yes. A. Well, I told him prior to this, and I told him specifically that day, also. I told Judge Johnson —

Q. But what I'm trying to get at, Mr. Dukes, is when did you tell Mr. Zaccagnino prior to May 9th, that you wanted another attorney in the case? A. I don't remember the specific dates, but I told him several times, many times I told him.

Q. Now, prior to May 9th, did you in fact retain or speak to — let's ask it that way — did you speak to another attorney? A. Yes, sir.

Q. Who did you speak to? A. Attorney Bromson, from Windsor, Connecticut. I think his name is Attorney William Bromson.

Q. Anybody else? A. And Attorney — I don't remember all of the names — but I spoke to a variety of them.

Q. Okay. Did you in fact retain any of these attorneys that you spoke to?

THE COURT: Explain to him what you mean by retain.

Q. All right. Did you pay any of these attorneys a fee, in advance of going to Court, for them to handle the matter for you? A. The morning that I was in Court, for this attorney, the attorney called Mr. LaBelle, the State's attorney's office, and advised him that he was retained to represent me, Attorney Fazzano.

THE COURT: That's on June 16th?

Q. I'm trying to get to that, your Honor. Prior to May 9th. had you paid a fee to Mr. Zaccagnino? A. Yes, sir.

Q. And prior to May 9th, had you paid a fee to anybody else? A. No, sir — excuse me, Mr. Barlow.

Q. All right. Mr. Barlow. A. Yes.

Q. But Mr. Barlow had told you because of his legislative matters, he could not represent you, right? A. Yes, sir.

Q. Well, am I correct in believing that prior to May 9th you had not in fact retained any other attorney other than Mr. Zaccagnino? A. Other than Mr. Zaccagnino, that's all.

Q. Now, you have mentioned the name just now, Mr. Fazzano. When was the first time you spoke to Mr. Fazzano?

A. Well, I finally got an attorney that would accept the case, I think it was approximately twenty-four hours before I was going before June 16th.

Q. Approximately twenty-four hours before June 16th?

A. Yes, sir.

Q. You say you got an attorney that would take the case?

A. Yes, sir.

Q. And who was that? A. Mr. Fazzano, Attorney Fazzano.

Q. And when was the first time you talked to Mr. Fazzano? A. I talked to him over the telephone, because he was -- I was recommended to him.

Q. What I'm trying to get from you, Mr. Dukes, is when it was that you first talked to him. A. About a day or two before June 16th. I would say the 14th or the 15th.

Q. Of June? A. Yes, sir.

Q. Now, going back to May 9th, and I'm referring, your Honor, to page 2 of the return, there's a statement by Mr. Zaccagnino in the record, that you had told him you wanted to represent yourself, is that correct? A. Yes, I told him and Judge Johnson also, sir.

Q. All right. My question is to you, when did you first tell Mr. Zaccagnino that you wanted to represent yourself?

A. I think that would be approximately on May 9th, somewhere in that vicinity.

Q. On that day? A. Somewhere in there, yes, sir.

Q. And also on page two, Mr. Zaccagnino indicated that you had told him that you wanted to get additional counsel. Now, when did you first tell Mr. Zaccagnino that you wanted to get additional counsel? A. The day that Judge Johnson allowed us the twenty-four hour continuance. I don't know that specific date. I think this was the early part of May.

Q. Yes, but what I'm trying to get at, Mr. Dukes, is when did you tell Mr. Zaccagnino that you wanted another lawyer? A. That day, the specific day, yes, sir.

Q. Now, do you recall being in Court on May 9, 1967?

A. Yes, sir.

Q. Mr. Zaccagnino was with you? A. Yes, sir.

Q. I want you to describe to his Honor what happened — strike that. What time did you leave the Courtroom, if you can remember? A. Approximately I would say eleven thirty. Q. In the morning? A. Yes.

Q. And this was the Superior Courthouse on Washington Street? A. Yes, sir.

Q. And what happened when you went out of the Courtroom? A. Well, I was in Court, some State Policeman was sitting in the back. One was investigating the case, and I was in contact with them quite frequently during the course of this trial. Judge Sidney Johnson told me, when I informed the Court that I wanted an opportunity to hire new attorney to represent me in this case, he gave me twenty-four hours to retain a new counsel.

Q. And what happened when you left the Courtroom?

A. Well, as I walked out the door, there was a policeman, Madison Bolon, he's a detective on the narcotic — I think he handles narcotics — and he says Charlie, a warrant is coming down for you. He says you can walk out or you could go, but if you leave, we'll have to pick you up, so I says well, I only have twenty-four hours to hire a new counsel to represent me in this matter, and he says okay, so I attempt to walk out the door, and another detective, a Detective D'Onofrio —

Q. Who? A. Detective D'Onofrio —

Q. Of the Hartford Police? A. Yes, sir. He came up and grabbed me on my shoulder, and he says, "You're not going no where, you're under arrest," so I says, "If I'm under arrest, may I see the arrest warrant, because I only have twenty-four hours to get a counsel, because this matter will go forward in twenty-four hours," so he says, "Well, the warrant will be down," so I was reluctant to submit to arrest, because of the

time that was involved, and the absence of the arrest warrant, so I attempted to walk away, and about nine or ten policemen grabbed me and shoved me around the hall, knocked me down on the marble floor in the hallway, right in the presence of Mr. Barlow, Mr. Zaccagnino, and maybe a hundred spectators, right out there.

Q. And then what happened? A. And then they took me in the back room, at the Courtroom, and I think they called a wagon, they called a paddy wagon, what they take people to jail in, and they took me down to the Hartford Police Department.

Q. This was still on May 9th? A. Yes, sir.

Q. And what happened there? A. Well, I had just came out of the hospital for being in the hospital for over three months, from a major heart surgery, and major surgery, and I was in pretty bad shape because I just had been out maybe a couple of weeks or so, and I was depressed and confused and upset, and I had had medication, and I went in the men's room and I took all the medication I had. I guess it was about twenty-five or thirty pills.

Q. This is the men's room of the Police Department?

A. Yes, sir.

Q. And what happened? A. That's all I remember. When I woke up I was in the hospital with intravenous, and strapped down in the bed, and so forth and so on, with a police guard.

MR. WADE: At this point, I'd offer a copy of the medical report of the McCook Memorial Hospital, regarding Mr. Dukes' hospitalization there.

MR. LABELLE: No objection.

THE COURT: Petitioner's Exhibit 4.

(The document referred to was received in evidence and marked Petitioner's Exhibit 4.)

(There was a discussion off the record.)

BY MR. WADE:

Q. How long were you in the hospital? A. I don't remember, because I was unconscious, and I don't hardly remember when I left out of there, because I was in — had to be helped out.

MR. WADE: May I show him the document to refresh his recollection, your Honor?

THE COURT: Yes, point it out to him. It said he was conscious when they brought him in.

Q. I show you Petitioner's Exhibit 4 and ask you to look that over, and does that refresh your recollection as to how long you stayed in the hospital? Have you read it over?

A. Yes, sir.

Q. Now, referring to that, does it help you to remember how long you were in, by looking at that document, does that help you remember? A. Yes, sir. I add it up to be four days.

. All right. Now, I want to understand one thing. You say that you took these pills in the Hartford Police Station the day you were arrested? A. Yes, sir.

Q. Now, the hospital report, that was May 9th —

A. Yes, sir, the same day.

Q. Now, this hospital report indicates you were admitted on 5/11/67, in an unconscious state. The question is, were the

pills taken at the police station or somewhere else? A. At the police station.

Q. And when did you wake up? A. I don't remember. I don't remember when I woke up because I was in such a daze, I didn't even know where I was.

Q. All right. Now, when you woke up, were you in a bed? A. Yes, sir.

Q. And were there any kinds of restraints on you? A. Yes, sir.

Q. What restraints? A. My legs —

THE COURT: What does this have to do with what happened when he got to the hospital, as to what his condition was? He didn't enter a plea that day.

MR. WADE: No, your Honor. What I'm getting at is that one of my claims here in the petition is that the plea was involuntary because he was not afforded reasonable opportunity to get counsel. I intend to show here, through the sequence of questioning, that from the time Judge Johnson said he had twenty-four hours to get another lawyer, he was placed under arrest — now, I'm going into whether or not he was in restraint when he was in the hospital, and I'll take it from there.

THE COURT: All right.

BY MR. WADE:

Q. Were there any restraints on you when you were in the hospital? A. Yes, sir.

Q. What restraints? A. My hands was handcuffed to the bed, and my ankles was tied to the bed, with straps down

to the bed, with a police officer was at the bed with some visitors.

Q. Speak up so the Judge can hear you. A. Yes, sir. My ankles —

THE COURT: I can hear alright.

Q. Now, the report says that on May 13, 1967, you signed out against medical advice. What is the advice that you were given? A. Well, when I woke up, I didn't realize —

MR. LABELLE: What date?

MR. WADE: The report says May 13, 1967.

A. When I woke up, I didn't realize what I was saying or what I was doing, and I asked a nurse, I think it was. something to the effect could I go, because I was all shackled down to the bed, and intravenous was in my arms, and then they had something down here, and around me, and she says you are not in no condition to leave, and she says I have to see the doctor, so she went and got — I do remember she got about five doctors, and they kept telling me I shouldn't go, but I didn't really — if I realized what I was saying, I would have stayed, but I didn't realize what I was saying, so I don't remember signing out, but I remember saying that I wanted to go.

Q. Where did you go? A. Well, the policeman helped me outside, and they took me down to the police station in Hartford.

Q. From the hospital you went where? A. To the police station, and the police cell, down in back of the jail.

Q. Was it the jail or was it the Morgan Street Police Department. A. Well, the Morgan Street Police Department.

Q. And how long were you held there? A. I don't recall how long I was there.

Q. All right. The question is, were you ever at liberty prior to May 16th, when you finally went in and pled guilty to the charge? A. I think there was very shortly, very briefly.

Q. Well, you were at liberty, right? A. Very briefly.

Q. Well, can you tell his Honor how long? A. I can't recall how long I was at liberty at that time, because this was quite an ordeal.

Q. Now, during this period, were you taking any medications? A. Yes, I was taking medication.

Q. Where did you get them? A. I was getting the medication from — it was subscribed (sic) by Dr. Schwartz of Hartford. I think his office is Edwards Street — Burton Street, excuse me, Burton Street.

Q. And prior to your entry of your plea of guilty on May 16th, did you take any medications, and if so, how much? Now, I don't mean while you were at the hospital, I mean while you were at liberty, did you take any? A. Oh, I was taking them right along, because he had described (sic) them, and I was taking them I think three or four times a day I think it was.

Q. Did you advise Mr. Delaney that you were taking them, or Mr. Zaccagnino? A. No, sir, I didn't tell them.

Q. Now, referring now to May 16th, in the Superior Court in Hartford, did you have a discussion with Mr. Delaney regarding your plea of guilty? A. Well, yes, sir. I was very much surprised to see him there that morning.

Q. Now, tell his Honor what transpired between you and Mr. Delaney with regard to how you would plead on the case.

A. Well, it was my full understanding that I was to make a temporarily guilty plea, and I was under the impression from him that it could be withdrawn any time before imposition of the case.

Q. Imposition of what? A. Imposition of the sentence.

Q. Now, go back to that phrase, temporarily guilty plea, where did you get that? A. Well, that's what I understood Mr. Delaney to say.

Q. How long a period of time transpired in your discussions with Mr. Delaney about what plea you should enter?

A. Well, I would say about ten minutes. He says the only chance we got is to plead guilty, because I don't have adequate time to prepare your proper defense, and the State is going forward this morning, so our only shot is to plead guilty to this temporary guilty plea, and I was under the impression that it was counsel's strategy for me to delay to get a new counsel, whereas I could be properly defended.

Q. All right. Now, there came a time on May 16th, before you entered your plea, and I'm referring, your Honor, to page two of the May 16th transcript, where the Court asked you certain questions. Do you remember that?

A. Yes, sir.

Q. And the Court said, "Are you satisfied with Mr. Delaney and the services he is rendering you?" Do you remember that? A. Yes, sir.

Q. Do you remember what you said? A. Yes, I remember what I said.

Q. All right. You said that you were satisfied, right?

A. I was satisfied for the simple reason I was under the

impression that this was a formality and temporarily when Mr. Delaney cautioned me that the questions — that Judge Johnson would most likely ask me questions

Q. And the Judge asked you if you were entering your plea of your own free will, and you said yes to that? A. Yes. I was going along with the attorney's advice.

Q. And the court asked you if you knew the probable consequences, and you said yes to that? A. Yes, sir.

Q. Well, the question, Mr. Dukes, which is very basic to this case, is if you told the Judge that you were satisfied with counsel, and that you knew what you were doing, and this was a voluntary plea, at that point, the question is, is that what you meant to do when you plead guilty? A. That wasn't my intention whatsoever. I had no intentions of going forward with a guilty plea.

Q. Now, on June 16, 1967, by that time you had talked to Mr. Fazzano, right? A. Yes, sir.

Q. How many times? A. I must have spoke with him two or three times within two days, over the telephone.

Q. You had sent him a fee? A. I had told him I would have his fee there that morning. I did, when I was in Court that morning.

Q. Now, that's the next question. That morning in Court, did you have any money on you? A. Yes, sir.

Q. How much money did you have on you? A. I had about — let's see — I think it was about fifteen or sixteen hundred dollars.

Q. Was that the fee for Mr. Fazzano? A. He wanted fifteen hundred dollars, yes.

Q. Had you told Mr. Fazzano that you were going to be in Court that day? A. Yes, sir.

Q. What did he say, if anything, about his appearance there? A. He told me to go ahead to the Court, and he would contact the Court and the State's Attorney's office, and advise them that he is representing me with this matter, as counsel, and he said hat he would ask for a continuance for two or three days, or five days at the most, because he was detained in the Superior Court in New Haven on another case.

Q. Now, what did you think was going to happen on June 16th when you went to Court? A. Well, I thought that Mr. Zaccagnino would explain to the Court about the guilty plea, and I thought Mr. Fazzano would be there and take over from there.

Q. Well, you knew it was down for sentencing, didn't you? A. Yes, sir.

Q. Did you expect to be sentenced that day? A. Not at all, sir.

Q. Now, there are some statements that you heard this morning, in the file, by Mr. Zaccagnino, in which he says he influenced you —

THE COURT: Mr. Wade, you are going to be a while longer with him, aren't you?

MR. WADE: Just a couple of more questions, Your Honor.

THE COURT: I don't want to be in the position of shortening you up. Recess until two.

(Whereupon, Court was in recess for lunch.)

AFTER RECESS:

THE COURT: You were still questioning Mr. Dukes, Mr. Wade, when we recessed.

BY MR. WADE (continuing):

Q. Now, there was a statement made by Mr. Zaccagnino, at the time of sentencing in your case, Mr. Dukes, in which he said to the Court that he was maybe a little forceful. I want you to tell his Honor what transpired between you and Mr. Zaccagnino, regarding his telling you whether you should or should not plead guilty to the charges against you.

A. Well, he was trying to persuade me to change my plea all along, since he said he read the records or something in the State's Attorney's office, he was persuading me, you know, to change my plea and so forth and so on, because he wasn't going to try the case.

Q. Well, the question is, did he threaten you in any way, Mr. Zaccagnino? A. Well, what do you mean by threaten?

Q. Well, you explain to us — I don't know — did you feel you had received any sort of a threat? A. Well, I actually don't know exactly the definition for, you know — I mean in what terms you mean, but like I say, he persuaded me.

Q. Well, tell us how he persuaded you. A. Well, he says something to the effect like if I don't go along with this, they'll bury me, and he didn't intend to tie up his office, you know, to try this case.

Q. When you say they, you mean he was referring to the State of Connecticut? A. Yes, the State's Attorney, Mr. LaBelle.

MR. WADE: I think that's all I have.

CROSS EXAMINATION BY MR. LABELLE:

Q. Now, Dukes, in this case that you are here in prison on now, was only one of a number of charges that were pending against you at the time that you were sentenced, isn't that so? A. Yes, sir.

Q. And you did have some charges pending against you in Fairfield County? A. I think it was Farifield County, sir. I know he tried to get me — Mr. Zaccagnino tried to get me to plead to the charges, yes, sir, but the other charges, and I told him no.

Q. You had some charges pending in New Haven County? A. I don't remember exactly what county.

Q. Well, were there other charges? A. Yes, there was other charges.

Q. You also had some other cases pending in the Superior Court in Hartford at the time that you entered your plea in this case? A. Yes, sir, I think I did.

Q. No question about that? A. No.

Q. And one of them was the case that involved Sejerma and Baker? A. Yes, sir.

Q. The girls? A. Yes, sir.

Q. You recall that? A. Yes, sir, I recall that.

Q. And you were also charged in that same case with the girls? A. Yes, sir.

Q. And as I recall your testimony, Mr. Barlow had entered an appearance in that case for you? A. Yes, sir.

Q. Now, that case, as far as you are concerned had

nothing to do with this charge for which you were sentenced here?

MR. WADE: By that case, you mean the Sejerma?

Q. I'll withdraw the question. The Sejerma and Baker case, in which you were charged also, had no connection with the charges for which you are now serving this sentence?

A. No, sir, they are unrelated.

Q. Unrelated? A. Yes, sir.

Q. Now, if I recall your testimony correctly, you said that after talking to Mr. Delaney, you thought you had entered a plea of guilty, that you thought it was just a temporary guilty plea? A. Correct, sir.

Q. And after the guilty plea was entered, and the Court ordered a presentence report, did they not? A. Yes, sir.

Q. And as a matter of fact, you talked to the probation officer in connection with the report he was preparing?

A. Yes, sir, Mr. Capshaw.

Q. Now, did you tell Mr. Capshaw that your plea was only a temporary guilty plea, that you planned to withdraw it? A. Well, he told me that he heard that I was going to withdraw my plea.

Q. He told you that? A. Yes, sir.

Q. Did you tell him that it was only a temporary guilty plea? A. I told him I was undecided.

Q. Now, that was after May 16th, was it not? A. This was during the course of the probation investigation, sir.

Q. Yes, it was after you pleaded guilty. A. Yes, sir.

Q. So that you had to plead guilty in order for the probation report to be ordered? A. Right.

Q. Now, did you contact Mr. Fazzano at any time before June 15th? A. I contacted Attorney Fazzano approximately twenty-four hours before June 16th, to be precise, I can't pinpoint the exact time, but I figure it would be approximately twenty-four hours prior to June 16th, sir.

Q. Now, when you say you contacted him, you talked to him on the phone, didn't you? A. Correct.

Q. And you had never met him? A. No, I never met him, sir.

Q. And on June 16th, the day that you were sentenced, Mr. Fazzano called my office, did he not? A. According to him, he did.

Q. Yes, and according to me, too.

Mr. WADE: Well, objection to that, your Honor. This is testimony coming from Mr. LaBelle at this point.

MR. LABELLE: Well, I'll withdraw that.

THE COURT: It may be stricken.

Q. On the morning of June 16th, you were present in Court, were you not, when I informed the Court that I heard from Mr. Fazzano? A. I don't know exactly what you said to the Court, Mr. LaBelle.

Q. Well, we told Judge Devlin — you told him and I told him — that you had contacted Mr. Fazzano?

A. I told Judge Devlin that I did contact Attorney Fazzano.

Q. As a matter of fact, you talked to him on the phone the night before, isn't that true? A. I don't know exactly when.

Q. Well, you said twenty-four hours before.

A. Well, I talked to him on several occasions, within twenty-four hours.

Q. Several times then, the day before, is that what you mean? A. Prior to June 16th, within twenty-four hours.

Q. But from May 16th to June 15th, you didn't talk to Mr. Fazzano? A. Well, I talked to — I was shopping for an attorney to handle this case, and I talked with numerous attorneys to take the case, and I finally got — was recommended to Mr. Fazzano, and he agreed to represent me.

Q. And that was June 15th? A. Yes, sir.

Q. Now, did you ever tell Mr. Zaccagnino that you were shopping around to get a lawyer? A. Oh, he knows this, yes.

Q. Did you tell him? A. Yes, sir, definitely.

Q. Did you tell him you were going to withdraw your plea? A. Well, he knew that I was totally unsatisfied with the plea.

Q. Well, that isn't my question. Did you tell Mr. Zaccagnino, between May 16th and June 15th, that you were going to ask the Court to withdraw your plea? A. To be exact, I would say no, directly. Indirectly, I did.

Q. Okay, is that the answer, no? A. I don't remember. I can't answer that, Mr. LaBelle.

Q. Isn't it a fact that on June 16th, when you were before the bench to be sentenced, was the first time you told

Mr. Zaccagnino you wanted to withdraw your plea?

A. Not before the bench. I think it was in the Courtroom, in the Superior Courtroom, I was sitting in the back of the room, and you sent him back to tell me to come up and plead to these other charges, and you would nolle them or throw them out — this is what he told me — and I told him no, I'm not going to plead to the charges.

Q. That's the first time you told him you were going to change your plea, some time in the courtroom that morning? A. I don't know. I can't answer that, sir, but he knew I wasn't satisfied.

Q. Well, isn't it a fact that the first time you told Mr. Zaccagnino you were going to change your plea was in the Courtroom the morning you were sentenced? A. That's been almost three years, Mr. LaBelle, and it's difficult to remember everything, you know, to pinpoint everything that was said during the course of the three years that elapsed.

Q. Now, let me ask you about the date that you entered your plea, on May 16th, isn't it a fact that on the morning of May 16th, and during the course of the morning, you had a lot of conferences with Mr. Delaney? A. Between the three of us, not directly with you, but you were standing over there, and he probably was over here, and I was standing over here, and he was from you to me.

Q. Well, there were a lot of conferences, weren't there?

A. I would say about ten minutes or so.

Q. Didn't you go out in the hall two or three times?

A. Well, all three of us was out in the hall.

Q. And didn't you go off somewhere with Mr. Delaney to talk after he talked with me? A. Right across the corridor from the Courtroom, and you were standing right at the door.

Q. And this was ready for trial that morning, was it not?

A. Yes, sir.

Q. No question that the witnesses were there?

A. I don't know who was there.

Q. Well, you saw all — Officer D'Onofrio and Detective Bolton, they were around? A. Certainly.

Q. They were witnesses in that case, weren't they?

A. They was more than witnesses.

Q. But there isn't any question that the case was ready for trial that day, as far as the State was concerned?

A. Well, that's what he said, he wasn't going to prolong it, they was ready to go forward this morning.

Q. By he, you mean Mr. Delaney? A. Yes, Mr. Delaney.

Q. Now, is it your claim you had taken medication so you didn't know what you were doing on that day?

A. Yes, sir. I was taking analysis, I was under examination at the Hartford Institute of Living, on Retreat Avenue, and I was taking medication from the doctor, Doctor Schwartz there, I think it's 15 Burton Street, Hartford, Connecticut.

Q. What kind of medication were you taking?

A. I think it was two kinds, and I purchased them with the subscription at Morris Pharmacy. I don't know exactly the name of them.

Q. You took that medication every day, did you?

A. Yes, sir.

Q. Not only the day you were in Court, every day?

A. Yes, sir.

Q. And you had been taking it for some time, had you?

A. Yes, sir.

Q. How long? A. I would say about — it was just after I came out of St. Francis Hospital, after being in there about three months, and I was doing things that I ordinarily wouldn't do, and he subscribed this medication for me, and I don't know exactly how long it was.

Q. Well, you were in St. Francis Hospital, weren't you, in 1966, isn't that so? A. Yes, sir, '66.

Q. August of '66? A. That's when I entered, because I stayed in I think about three or four months.

Q. You were shot? A. In the back, twice, yes, sir.

Q. And you went to St. Francis Hospital? A. Yes, sir.

Q. And after you got out of the hospital, the doctor prescribed some medication? A. Well, they let me out of the hospital after I stayed in there I think about three months, for me to stay on the street. I had a colostomy — you know what a colostomy is — and I had to go back, I would say in thirty days, and have another operation for them to put, you know, operate again, you know, put this back in. Now, the specific dates, I know it was during the latter part of '66.

Q. Well, is it a fact that you were taking this same medication from could we say January of '67? A. No, sir.

Q. When did you start taking it? A. After I came out of St. Francis Hospital.

Q. Back in '66 then? A. I would put it at say two months prior, or maybe less, before May 9th. That would be let's say April.

Q. Well, during the period that you were taking this medication, you were out on the street, you weren't hospitalized, other than this St. Francis hospitalization?

A. I was in the hospital and in jail, and frequently, I mean briefly, on the street. I wasn't on the street —

Q. Well, let's see if we can't pin down these dates. This offense that you were sentenced on here now, occurred on March 14, 1967, didn't it? A. Yes, sir.

Q. That's the narcotics part of it? A. Yes, sir.

Q. And you were arrested under that charge on March 14th? A. Yes.

Q. And you made bond on that? A. After a while, I finally made bond. Yes, sir.

Q. So that in May, when you were called into the Superior Court on your case, you were on bond?

A. Yes, sir, I was out on bond.

Q. And on May 16th, when you entered your plea of guilty, you were on bond? A. I just got out of jail, out of the hospital and jail, and then I just got out I think maybe a matter of a day or two, or maybe two days before I entered the plea.

Q. All right, I'll come back to that, but from May 16th, when you entered your plea, until June 16th, when you were sentenced, you were on bond? A. Briefly.

Q. Well, when weren't you on bond between May 13th and June 16th? A. Well, the way the State Policemen had me running around and putting me in jail, and the treatment that I received, I wasn't on the street hardly no time.

Q. Are you telling this Court that between May 16th and June 16th, you were in jail? A. Precisely, most of the time.

Q. For what charge? A. I don't even know. I can't answer that. They had me charged with breaking in a drug store in Bristol. I never had been in Bristol in my life.

Q. You were arrested on that charge on May 9th, weren't you? A. As I left the Courtroom corridor.

Q. On May 9th? A. That's right.

Q. And you made bond on that charge? A. Not just then. After they floored me and beat me in the Courtroom corridor, and took me down to Morgan Street, and after I was attempted to commit suicide, and was taken to the hospital, and stayed in the hospital, and then came out of the hospital, and went to Morgan Street and they charged me for the ruckus in the Courtroom there, and finally nollled like the other cases, and took me out to some town I never been in in my life, and charged me — I don't even know nothing about — just harrassment to detain me, that's all, to keep me from getting a new counsel.

Q. Didn't you get bond on that charge? A. Eventually I did.

Q. Were you on bond on May 16th? A. That specific day I was out on bond.

Q. Is it your claim that you were arrested again after May 16th? A. Yes, sir.

Q. And that you went to jail after May 16th?
A. Yes, sir.

Q. And you were in jail sometime between May 16th and June 16th? A. Yes, sir.

Q. You tell the Court when you were in jail.

A. I can't pinpoint the exact date. The record should

indicate when I was in jail, and in the hospital. I can't pinpoint the specific dates because it was, you know, almost three years —

Q. You were not on bond on June 2nd, were you — excuse me — you were not in jail on June 2nd? A. No, sir.

Q. You came into Court on June 2nd? A. Yes, I was making appearances to Court.

Q. You made it, didn't you? A. I always make it to Court.

Q. You were in Court on June 2nd in the Superior Court? A. Any time I'm supposed to go to Court, I make an effort to get to Court.

Q. Didn't you come to Court on June 2nd with Mr. Zaccagnino, when your sentencing was postponed for two weeks?

A. June 2nd, let me see — let me think back to June 2nd — I would say no. No, I wasn't in Court June 2nd.

Q. You better think this over straight. On June 2nd, weren't you in Court with Mr. Zaccagnino when your case had to be postponed because your probation report wasn't ready? A. You mind if I ask you one question, please?

Q. Answer that question. A. Well, I'm trying to clarify it the best I could.

MR. WADE: Well, if I might make a suggestion, your Honor, I think because this — the point Mr. LaBelle is making, perhaps the witness could be shown the part of the return that reflects the June 2nd appearance and see whether or not that refreshes his recollection at all.

THE COURT: Oh, I think he's entitled to cross examine as he pleases. If you want to rehabilitate him, you may do

that, Mr. Wade, if he needs rehabilitation. Overruled, for the record.

A. I'm trying to think of the day that the girls got sentenced, because I was not in Court the day they got sentenced, because I know that I wasn't in Court that specific day, because that's when I was told what was said about me, and so forth and so on, in Court, so I'm quite sure I wasn't in Court that day.

Q. All right. I want you to tell the Court how many days between May 16th and June 16th you spent in jail, 1967. A. I just can't recall the exact date, but I know that I was out briefly and going back to Court. I had to go and make appearances in two or three different Courts, on the same date, at the same time, and was making calls to the Court telling them that I would be late, and I was very busy with Court matters, going back and forth to Court during June 16th and the sentencing date.

Q. Did you tell this to Judge Devlin, that you were in jail between May 16th and June 16th, when you asked him to change your plea? A. I didn't say too much to the man. The confused state of mind I was in, what I said to him was very briefly. I told him that I was flabbergasted and I didn't know what happened, as baffled as I was, I didn't say too much to the man.

Q. You asked him to change your plea, didn't you?

A. I did, before imposition of the sentence.

Q. And he denied it? A. He denied it

Q. Did you tell him that you wanted to change your plea because you couldn't get a lawyer because you were in jail? A. I told Judge Devlin that I was flabbergasted and baffled of the proceedings at that time, I didn't know exactly what was going on, all the pressure was on me.

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of attempted a dangerous
18, 1957, in Hartford?

MR. WADE: Objection, irrelevant.

THE WITNESS: I can't go that far back, Mr. LaBelle.

BY MR. LABELLE:

Q. You don't know? A. No, I don't know.

Q. Are you the same Charles Dukes who was convicted of breaking and entering with criminal intent in the Hartford Superior Court on February 10, 1961?

MR. WADE: Well, I offer the same objection, your Honor, and I'd ask this, through the Court. Is Mr. LaBelle planning to put the man's criminal record in? If so, I say put it in, and —

THE COURT: I can't tell Mr. LaBelle, nor can you, how to try his case.

MR. WADE: Well, then I'll object to him going down seriatim on these criminal cases.

THE COURT: You object to this as you did to the prior one. It's overruled. You may have an exception.

MR. WADE: May I understand that as the line continues —

THE COURT: You may object to each one.

MR. LABELLE: I claim it on the same basis, of credibility, your Honor.

THE WITNESS: Yes, sir, I remember.

MR. LABELLE: Are you that Charles Dukes?

THE WITNESS: Yes, sir.

MR. LABELLE: I'll rest, your Honor.

MR. WADE: That's all I have, your Honor.

THE COURT: Mr. Dukes, let me ask you a question. At the hearing on June 16th, is it your understanding as it is mine, that Mr. Zaccagnino represented to the Court that he had been -- and the words he used was "forceful" with you, is that right?

THE WITNESS: Yes, sir.

THE COURT: Now, did Mr. Zaccagnino have anything to do with the plea of guilty which entered on the earlier date of May 16th?

THE WITNESS: Yes, sir.

THE COURT: Weren't you in fact on that day represented by Mr. Delaney?

THE WITNESS: Yes, but all he told me was what Mr. Zaccagnino said, and he tell me, he said, he didn't know from nothing, he says, and he only got ten minutes, and that's not adequate time for him to prepare no defense to try this case. He says he can't try the case.

THE COURT: What I'm getting at is that on that par-

ticular date, when you entered your plea, Mr. Zaccagnino had nothing to do with you. You didn't even see him.

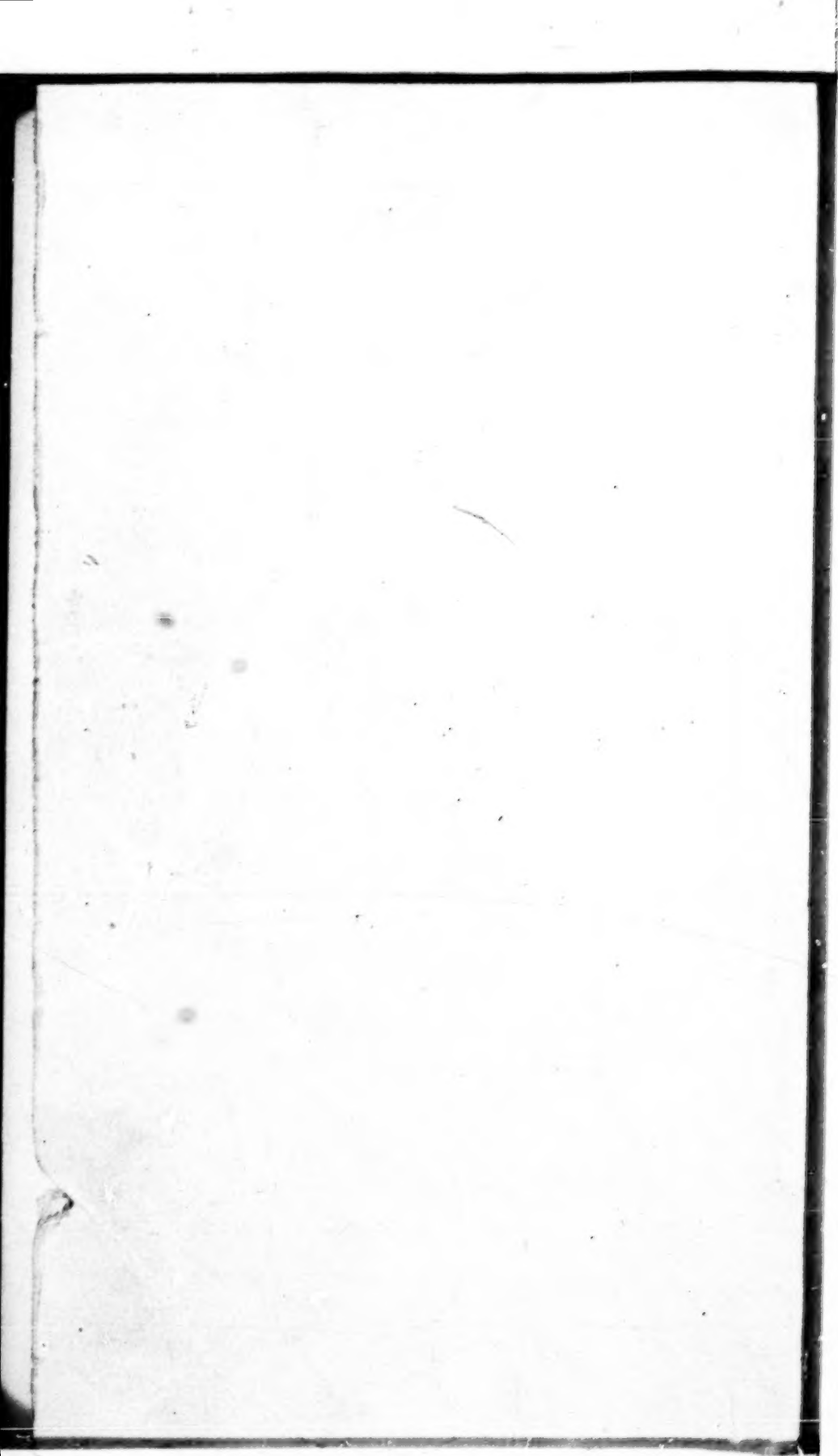
THE WITNESS: No, sir.

THE COURT: So that if there was any pressure, the word you used, or force, which he used, that would have been on the part of Mr. Delaney, would it not?

THE WITNESS: The misunderstanding, yes, sir.

THE COURT: I have no further questions. You can step down.

MR. WADE: Petitioner rests, your Honor.



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Supreme Court of the United States

No. 71-5172 -----, October Term, 19--

Charles O. Dukas,

Petitioner,

v.

Warden, Connecticut State Prison

On petition for writ of Certiorari to the Supreme ----- Court
of the State of Connecticut.

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, ~~denied~~ granted.

November 9, 1971